



**DELHI UNIVERSITY
LIBRARY**

DELHI UNIVERSITY LIBRARY

Cl. No.

Date of release

Ac. No.

This book should be returned on or before the date last of below. An overdue charge of one anna will be charged for as the book is kept overtime.

JAPAN'S CASE EXAMINED

*With Supplementary Chapters on the Far Eastern Policies
of the United States, and the Significance to the
World of the Conflict in the Far East*

LONDON: HUMPHREY MILFORD
OXFORD UNIVERSITY PRESS

JAPAN'S CASE EXAMINED

*With Supplementary Chapters on the Far Eastern
Policies of the United States, and the Significance
to the World of the Conflict in the Far East*

By

WESTEL W. WILLOUGHBY

Professor, Emeritus of Political Science, The Johns Hopkins University;

Author of "*Foreign Rights and Interests in China*," "*China at
the Conference*," "*The Sino-Japanese Controversy and
the League of Nations*," "*Opium as an Inter-
national Problem*," etc.



BALTIMORE

THE JOHNS HOPKINS PRESS

1940

COPYRIGHT 1940, THE JOHNS HOPKINS PRESS

PRINTED IN THE UNITED STATES OF AMERICA
BY J. H. FULST COMPANY, BALTIMORE, MARYLAND

PREFACE

The purpose of this volume is a simple though dual one. It is to present in a comprehensive, yet brief, manner the aims which Japan is pursuing in the Far East, as shown by her own official declarations, and to examine as to their validity the arguments she has advanced in pursuance of these aims.

The author has sought to write in an objective and scientific manner. However, it seems but fair to the reader that the author should repeat a statement regarding himself which he made in the preface to his volume, published five years ago, *The Sino-Japanese Controversy and the League of Nations*. He there stated; "With regard to this matter of impartiality, it is to be said with frankness that its maintenance has been difficult by reason of the fact that for a considerable number of years he has been employed by the Chinese Government as an adviser or technical expert and, at present, is serving as adviser to the Chinese Embassy at Washington, D. C.". The author, in that preface, also said: "It is true that the present volume supplies evidence of actions that are much to the discredit of Japan, and places her in the position of advancing propositions of international right and of League jurisprudence which the other nations of the world have been unable to accept, but this result, it is believed, has been necessitated by the facts of the controversy, rather than due to a partial presentation of those facts.

However, as to this, each reader of this volume must judge for himself." It is believed that these observations are appropriate to the present volume.

The author is indebted to the American Journal of International Law for permission to reprint as Chapter seven his article entitled "Far Eastern Policies of the United States." He is similarly indebted to the Chinese Cultural Society of New York City for permission to reprint as Chapter eight his paper "The Significance to the world of the Conflict in the Far East."

W. W. W.

TABLE OF CONTENTS

CHAPTER ONE

	PAGE
JAPAN'S ACTIONS IN CHINA.	1
Japan and the Washington Conference: The Nine Power Treaty.	2
Japan's Policies, 1922-1931.	8
American Policy during the First Weeks Following Japan's Invasion of Manchuria.	9
Continuation and Extension of Japan's Invasion of China. United States Non-Recognition Note of January 7, 1932.	11

CHAPTER TWO

JAPAN'S PLEAS IN JUSTIFICATION	17
Japanese Psychology	17
Japan's Plea of Self-Defense	20
Self-Defense as Recognized by International Law	24
Japan's Plea of Defense Needed against Russia.	30
Japan's Claim to Superiority of Rights over other States: Her Divine Right Theory.	35
Japan's Claim of Vital Interests	37
Japan's Claim of Right to Defend Herself against Communism	40
Chinese Communism Described	44
Japan's Plea Based on Anti-Japanese Feeling in China.	47
Reasons for Anti-Japanese Feeling in China.	48
Japan's Opium Policies in China.	49

	PAGE
Attitude of Chinese Government toward Anti-Japanism in China	52
Japan's Claim that China is an Unorganized State	54
Japan's Fear of the Strong China Which was Developing	58
Cultural Developments in China and Japanese Reaction to Them	61
Japan's Efforts to Prevent the Creation of a Politically Unified China	64

CHAPTER THREE

JAPAN'S REAL AIMS AS AVOWED	68
Japans' Statement of April 17, 1934: Amau Statement	70
British and American Replies to this Statement.	72
United States Notes to Japan, October 6, 1938, and December 31, 1938.	74
Japan's Repudiation of Treaty Obligations	76
Japan's Declaration of a "New Order" for East Asia	77
Reply of the United States to this Declaration	78
British Reply	80
The Doctrine of <i>Rebus sic Stantibus</i>	81
Development of Japan's Demands upon China: Japan's "Three Principles."	88
Japan Severs Relations with the Nationalist Government of China and Announces Intention to Promote Establishment of a New Government in China.	90
Hirota's Four Points of January 23, 1938.	92
Premier Konoye's Statement	94

TABLE OF CONTENTS

ix

	PAGE
Japan's Reply to the American Note of October 6, 1938	95
Premier Konoye again States Japan's Aims	96
Articles of Agreement between Wang Ching-wei and Japan	99
Comment upon the Wang Ching-wei Agreement . .	104
Wang Ching-wei Régime Inaugurated: Reactions thereto	105

CHAPTER FOUR

JAPAN'S MONROE DOCTRINE.	109
Japan's Doctrine	110
The Monroe Doctrine of the United States. . .	120
The Two Doctrines Contrasted	128
England's Monroe Doctrine	136

CHAPTER FIVE

THE POSSIBLE IMPERIALISTIC AMBITIONS OF JAPAN: HER PAN-ASIAN POLICY	140
---	-----

CHAPTER SIX

THE TANAKA MEMORIAL	146
-------------------------------	-----

CHAPTER SEVEN

FAR EASTERN POLICIES OF THE UNITED STATES . . .	154
---	-----

CHAPTER EIGHT

THE SIGNIFICANCE TO THE WORLD OF THE CONFLICT IN THE FAR EAST	183
---	-----

APPENDICES

	PAGE
A. The Nine Power Treaty	199
B. The Paris Peace Pact	203
C. United States Note to China and Japan, January 7, 1932	210
D. Secretary Stimson's letter to Senator Borah	211
E. United States Note to Japan, October 6, 1938 . . .	212
F. Japanese Note to the United States, November 18, 1938	219
G. United States Note to Japan, December 31, 1938 . .	224
H. Note of Great Britain to Japan, January 14, 1939 .	231

CHAPTER TWO

JAPAN'S PLEAS IN JUSTIFICATION

Japanese Psychology. Before examining in detail the various pleas which Japan has made in attempted justification of her actions in China, it will be worth while to consider, briefly at least, the proposition, by some writers advanced, that Japanese reasoning should not be tested by the same criteria as are applied to Western thinking.

Those who hold this view are led to it by the fact that many of Japan's assertions have been contrary to known facts, or, where these facts have not been disputed, the conclusions drawn from them by Japan have seemed so absurd as to be paradoxical.

That the Japanese do not reason according to the rules that find a place in Western logic appears to be the belief expressed by Miss Barbara Wertheim in an article entitled "Japan: A Clinical Note" which appeared in the April, 1936, issue of *Foreign Affairs*.

In this article, Miss Wertheim is disposed to grant that the Japanese have convinced themselves of the righteousness of their actions in Eastern Asia, and, because they are thus convinced, they feel that criticism of themselves must be based upon misunderstanding by their critics. How is it possible, asks Miss Wertheim, that the Japanese have been able to arrive at this state

of mind? The following quotation from her article will show the answer she gives to this question:

"So completely divorced is the Japanese mental process from the Occidental, so devoid of what Westerners call logic, that the Japanese are able to present a false picture yet sincerely believing them. How this is accomplished it is impossible for a foreigner to understand, much less attempt to explain. That appearances mean more than reality to the Japanese mind is the only clue the writer can provide. A fact, as such, means little to a Japanese; should he be forced to face certain unaccepted facts he will cut them dead, just as we might cut an unwelcome acquaintance on the street."¹

This opinion which Miss Wertheim holds with regard to the peculiar manner in which the Japanese mind works is corroborated by the well-known Japanese scholar, Tatsuji Takeuchi.² In a recent article contributed to an American journal and entitled "The Background of the Sino-Japanese Crisis,"³ Mr. Takeuchi declares that in the situation in the Far East there are

¹ Miss Wertheim also refers to the failure of the Japanese to understand what Western people mean by "negotiate." "Negotiation between two States," says Miss Wertheim, "is the mutual attempt to approach common ground. Its essence is compromise. But the concept of compromise is quite foreign to the Japanese. To them, diplomatic negotiation means the effort of each representative to put over his own plan intact, the end in view being that one shall win and the other shall lose." With this Japanese characteristic, if it exists, the present writer is not concerned.

² Author of *War and Diplomacy in the Japanese Empire*.

³ *Amerasia*, June, 1938. The reader will find it interesting to examine the reply to this article in the same issue of this journal by Mr. Frederick V. Field.

involved variables " which seem to defy scientific analysis according to Western standards " and that, among these analysis-defying facts is the circumstance that the Japanese use " terms and ideologies which may convey a definite meaning when addressed to the Japanese but may evoke totally different responses to those hoped for from Americans." ⁴

The present writer has found Miss Wertheim's article a stimulating one, and he is intrigued by what Mr. Takeuchi has to say with reference to the workings of the minds of his countrymen, but he cannot accept the premise that the logical processes of the Japanese, or, for that matter, of any other people, can be regarded as fundamentally different to those which operate in the Western World.⁵

The rules of logic are universal, and, when these are properly applied, its conclusions are ineluctable to the members of all races. However, individuals or races can, and do, differ as to the fundamental premises posited by them. When, therefore, we find the Japanese making statements which to us seem absurd, the ex-

⁴ Mr. Takeuchi refers to the existence of "dualism" in Japanese mentality, but does not explain exactly what he means by this term.

⁵ Mr. Field in his reply to Mr. Takeuchi's article says of the Japanese assertions " we are fighting in China because we love the Chinese," and " we want to establish permanent peace in the Orient: " " I doubt if the longest and most involved possible dissertation on national psychology could ever convince me that these phrases really made the slightest sense to the Japanese themselves. . . . I am afraid that the truth of the matter is that the Japanese spokesmen cannot rationalize the present aggressive policy in China in intelligible terms for either their own people or for foreigners and are consequently obliged to resort to a type of verbal mysticism which in Europe has been so elaborately developed by Hitler." *Amerasia*, June, 1938.

planation may be, either that they give meanings to words different to those we ascribe to them, or, if the matter be one of passing judgment, whether of expediency or of essential morality, that the underlying assumptions or normative standards may be different. Also there should not be excluded the possibility that, in many instances, the Japanese, like other persons, make statements which they themselves know to be not true, and are aware of the fact that the persons addressed will know them to be untrue, but with the idea that their "face" is thus saved. This desire to "save face" is generally supposed to be especially felt by Orientals, but that it plays a considerable part in Occidental intercourse is also true.

The explanation, then, of the apparent contradiction between Japan's acts and her declarations with regard to them is to be sought, in most cases, in some fundamental conceptions generally held by the Japanese, but not accepted by those who criticize their actions. One of these fundamental assumptions of the Japanese which the rest of the world certainly does not accept, is that, because of their superiority of culture, and their divine descent, they, the Japanese, have rights which they are not called upon to recognize as reciprocally possessed by other peoples. It can be seen how, with such a premise, the Japanese can justify to themselves acts which, to others, are patently unjustifiable.

Japan's Plea of Self-Defense. Although it is not the purpose of this small volume to deal with events of the Sino-Japanese controversy which has assumed such an

acute form since September, 1931, but rather to discuss the motives and policies and attempted justifications which explain the events, it has been thought necessary to state the facts which have been given in the preceding chapter in order that the discussion which is to follow may be fully understood and appreciated.

During the time that the situation created by the Japanese military occupation of Manchuria and North China and by the attack upon Shanghai was actively discussed in the Council and Assembly of the League of Nations, the Japanese Government continued to assert that it had no ulterior aims in view beyond the protection of its own nationals and the maintenance of its own treaty rights in China. This Japan continued to assert notwithstanding the fact that most of the operations of her military forces in China had no discernible relation to these asserted aims. However, these attempts at justification were examined with care by the Lytton Commission which had been appointed by the League and which, in addition to examining the voluminous documents supplied to it by the Governments of China and Japan, visited Japan and China and itself made a first-hand and detailed inquiry into what had taken place in Manchuria and North China.

As regards the claim by Japan that her military operations in China had been justified as measures of legitimate self-defense, the Commission found this not to be the case. Since the night of September 18, 1931, when the Japanese attack upon Manchuria began, the Commission said, "the activities of the Japanese military

authorities, in civil as well as in military matters, were marked by essentially political considerations. The progressive military occupation of the Three Eastern Provinces [Manchuria] removed in succession from the control of the Chinese authorities the towns of Tsitsihar, Chinchow and Harbin, finally all the important towns of Manchuria; and, following each occupation, the civil administration was re-organized." As regards the government which the Japanese had established in Manchuria and named Manchukuo, the Commission declared: "It is clear that the Independence Movement, which had never been heard of in Manchuria before September, 1931, was only made possible by the presence of Japanese troops. A group of Japanese civil and military officials, both active and retired, who were in close touch with the new political movement in Japan . . . conceived, organized and carried through this movement. . . . For this reason, the present régime cannot be considered to have been called into existence by a genuine and spontaneous independent movement."

As regards the further claim made to the League of Nations by Japan that her actions in China had been made necessary, or, at least, had been justified, by reason of the fact that for years the Chinese had, in a variety of ways, been giving just cause of complaint to Japan, and, in particular, had been placing obstacles in the way of the full enjoyment by Japanese nationals of their treaty rights in Manchuria,⁹ the Lytton Commis-

⁹ It is to be noted that most of these claimed treaty rights in Manchuria were those that China had been forced to recognize in 1915 as a result of the Twenty-One Demands then made by Japan upon China.

sion found that these questions were of a character that made them capable of solution by arbitration or other peaceful means.⁷

The foregoing observations have related to the acts of Japan in China up to the time of the February 24, 1933, report of the Assembly of the League. As regards the military operations of the Japanese forces since the outbreak, in July, 1937, of the war still in progress, a plea of self defense upon the part of Japan is still less reasonable. As to these acts, the Sub-Committee of the Far Eastern Advisory Committee of the League, in a report which was adopted on October 5, 1937, and later approved by the Assembly of the League has this to say:

⁷ The Japanese strongly urged that the Chinese, by their various boycotts of Japanese goods had acted without international legal right and had thus given just grounds for retaliatory action upon the part of Japan. This matter was carefully examined by the Lytton Commission, but it declined to pass upon the technical international legal rights involved. The nearest the Commission came to passing judgment upon these points is contained in the following paragraph of its Report: "The claim of the [Chinese] Government that the boycott is a legitimate weapon of defense against military aggression by a stronger country, especially in cases where methods of arbitration have not previously been utilized, raises a question of much wider character. No one can deny the right of the individual Chinese to refuse to buy Japanese goods, use Japanese banks or ships, or to work for Japanese employers, to sell commodities to Japanese, or to maintain social relations with Japanese. Nor is it possible to deny that the Chinese, acting individually or even in organized bodies, are entitled to make propaganda on behalf of these ideas, always subject to the condition, that the methods do not infringe the laws of the land. Whether, however, the organized application of the boycott to the trade of one particular country is consistent with friendly relations or in conformity with treaty obligations is rather a problem of international law than a subject of our inquiry."

However, it is important to note that the Assembly of the League of Nations, in its Report of February 24, 1933, came squarely out with the statement that "the use of the boycott by China subsequent to the events of September 18, 1931, falls under the category of reprisals," and, inferentially, to be justified as such.

"After examination of the facts laid before it, the Committee is bound to take the view that the military operations carried on by Japan against China by land, sea and air are out of all proportion to the incident that occasioned the conflict; that such action cannot possibly facilitate or promote the friendly cooperation between the two nations that Japanese statesmen have affirmed to be the aim of their policy; that it can be justified neither on the basis of existing legal instruments nor on that of self-defense, and that it is in contravention of Japan's obligations under the Nine Power Treaty of February 6th, 1922, and under the Pact of Paris of August 27th, 1928."

Self-Defense as Recognized by International Law. The Lytton Commission was primarily a fact-finding body, and, therefore, did not conceive it to lie within its province to discuss the technical questions of international rights and responsibilities that were involved in the events and circumstances it was called upon to investigate and report upon. Thus, although it found, in fact, that the acts of the Japanese armies in China went beyond those of legitimate self-defense, the Commission gave no careful consideration to the general doctrine of self-defense as recognized by international law. Inasmuch as Japan, notwithstanding the opinion expressed by the Lytton Commission, has not ceased to claim, that, in her actions in and with regard to China, she has acted defensively, it is due to her that the right of national self-defense as known to international law should be carefully examined. Especially is this neces-

sary in view of the fact that, by setting up this defense Japan has sought to escape from the charge of violating the undertaking assumed by her as a signatory of the Paris Peace Pact.

Japan has not declared war against China, although she has waged war upon a large scale. In this technical sense, then, she has not departed from the condemnation contained in the first article of the Peace Pact of recourse to war for the solution of international controversies, and the renouncement of war as an instrument of national policy in the relations of States with one another. But the Peace Pact goes much further than this, for, by its second article the High Contracting Parties agree "that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means."

The means which, for nearly ten years, Japan has employed for the solution of her disputes or conflicts with China can scarcely be claimed, even by Japan, to have been "pacific," but she has sought to escape from the conclusion that she has violated the pledge given when she signed the Pact by calling attention to, and relying upon, certain interchanges of views by certain of the Powers prior to the signing of the Pact which purported to give a construction to the terms of the Pact which permits a resort to war or other non-pacific means when a nation is acting in self-defense.*

* In the paragraphs which follow, the author has drawn upon his discussion of the same subject in his *Sino-Japanese Controversy and the League of Nations*.

The right of a State to intervene with force in or upon the territory of another State in order to protect its own legitimate interests or the interests or lives of its nationals within that State is, under certain circumstances, recognized by international law and international practice. Since such right is by way of exception to the general and fundamental premise governing all international relations, that each State has supreme and exclusive control within its own territory and may, therefore, legitimately object to any actions thereupon by another State without its consent, foreign intervention, especially by the employment of force, must be clearly and imperatively called for by the conditions which exist. A well-known and generally accepted statement of this governing rule is that of Daniel Webster, made by him in the *Caroline Case* when he was Secretary of State. Writing to Lord Ashburton on August 6, 1842, he said that while "respect for the inviolable character of the territory of independent States is the most essential foundation of civilization" there are exceptions to this inviolability growing out of the "great law of self-defense." However, he went on to say that these exceptions should be confined to cases in which the "necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation."⁹

It further follows from the rule which has just been stated that, when intervention does take place, no actions

⁹ *Webster's Works*, vol. V., p. 30. Quoted in *Moore's Digest of International Law*, vol. II, p. 412.

by the intervening forces are justified beyond those that are imperatively demanded for self-defense.

In its Report, the Lytton Commission, with reference to the actions of Japan's forces on the night of September 18, 1931, when the invasion and military occupation of the Manchurian provinces of China was begun, said: "The military operations of the Japanese troops during this night, which have been described above [in the Report], cannot be regarded as measures of self-defense." The Commission, however, added: "In saying this, the Commission does not exclude the hypothesis that the [Japanese] officers on the spot may have thought that they were acting in self-defense."

The Japanese have attached considerable importance to this last statement of the Commission. In fact, however, this qualification would seem to have no significance beyond making it possible to exculpate, personally, the officers concerned, for, even if it be conceded that these officers believed that the military operations ordered by them were needed for self-defense, the fact would remain that their belief was a mistaken one and that, therefore, they had placed their Government in the wrong. Furthermore, whatever may or may not have been the propriety of the acts of the Japanese troops at the beginning of their occupation of Manchuria, their subsequent acts became so extreme that their attempted justification upon grounds of self-defense, as recognized by accepted international law and practice, became an obviously futile one.

This would seem to dispose of the claim by Japan

that, since September, 1931, she had acted in China in self-defense. However, in order to make this record complete, it is desirable that at least brief attention should be devoted to the principle of self-defense as it was discussed in connection with the signing of the Paris Peace Pact.

Before the signing of the Pact several States expressed some concern as to whether the undertaking to which the proposed treaty would commit them might not render illegal otherwise legitimate self-defensive measures. To quiet this apprehension, Secretary of State Kellogg circularized a statement which contained the following sentences: "There is nothing in the American draft of an anti-war treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign State and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require war in self-defense."

This language, upon first reading, seems dangerously broad, but, when examined carefully and critically, it is seen not to be so. In the first place, it is seen that, according to this statement, the purpose for which defensive measures will be legitimate, even after the signing of the Pact, is limited to the prevention of invasion of a State's own territory. Certainly there is no suggestion (nor was there in any of the correspondence preceding the signing of the Pact) that there would be a reserved right of the signatories to conduct military

operations upon the territory of another State, except, possibly, to prevent an otherwise reasonably certain and immediately impending military attack upon the territory of the State resorting to the defensive measures, or to defend nationals immediately threatened with violence

With regard to the statement made by Secretary Kellogg that each State is alone able to decide whether self-defensive measures need to be taken in order to repel an invasion of its own territory, it is to be repeated that while, of necessity, a State must judge for itself when the occasion for self-defense has arisen, and what measures to that end are required, there is no ground for holding that such measures, when taken by a State, are not subject to examination and possible condemnation by other States. The same is true in municipal law which recognizes that every individual is entitled to defend himself against an assault, actual or one that can be reasonably seen to be immediately impending. But, when one sets up such a defence, its validity is open to question in the courts.¹⁰

¹⁰ Cf. Lauterpacht, *Function of Law in the International Community*, p. 179. See also the article "The Legal Meaning of the Pact for the Renunciation of War," in *American Political Science Review*, August, 1936 (vol. XXX, p. 653), by Miroslav Gonsiorowski. It may also be noted that the right of national self-defense has been much discussed in connection with the many attempts to define international "aggression." Oppenheim, in his standard treatise on *International Law* (5th ed. (1935) II, p. 159) says: "Elementary principles of interpretation preclude a construction which gives to a State, resorting to an alleged war of self-defense, the right to ultimate determination with a legally conclusive effect, of the legality of such action."

Japan's Plea of Defense Needed against Russia. Aside from her attempt to justify her acts in China as being in defense of her interests or those of her nationals in China, Japan has resorted to this claim in a broader and less definite way in connection with what she has termed her "vital interests," and, somewhat more precisely, in connection with the need felt by herself to secure herself against possible attack by Russia. This matter of the so-called "vital interests" brought forward by Japan will receive later attention, but a word can be said in this place with regard to Japan's fear of Russia.

The Lytton Commission recognized that, irrespective of whatever other explanation of her actions in Manchuria Japan had given, an indubitable motive lying back of them was the desire of Japan to place herself in a more favorable position *vis à vis* Russia. Thus, in its Report, the Commission said: "Manchuria has been frequently referred to as the 'life-line' of Japan. Manchuria adjoins Korea, now Japanese territory. The vision of a China, strong and hostile, a nation of four hundred millions, dominant in Manchuria and in Eastern Asia, is disturbing to many Japanese. But to the greater number, when they speak of menace to their national existence and of the necessity for self-defense, they have in mind Russia rather than China. Fundamental, therefore, among the interests of Japan in Manchuria is the strategic importance of this territory."

Let it be admitted that this fear of Russia by Japan is a real and reasonable one, and let it also be admitted

that the military control by Japan of the Manchurian provinces of China, including Jehol, Chahar and Suiyuan would render Japan more secure in case of a Russian attack, the crucial question still remains whether, as a matter of international law or of international morality, one country is justified in invading and assuming military and political control of the territory of another country with which it is not at war, in order that thus its own security against a possible attack by a third country may be increased. When thus stated, it is clear that the answer must be that a country is not justified in so acting. It is believed that international law writers will be found unanimous upon this point.

What has already been said with reference to the right of self-defense, as recognized but strictly limited by international law, is more than sufficient to show why this answer must be given, for the question that has just been stated posits or postulates, as regards Japan's actions in China since September, 1931, a situation in which Japan has not been faced with a danger so great and so imminent as, to use Daniel Webster's words, earlier quoted, to make a resort to self-defense "instant, overwhelming, and leaving no choice of means, and no moment for deliberation."

If any additional argument be needed to support the conclusion that has been stated, this can be supplied by pointing to the results that would inevitably follow from a different answer. No principle of international law is more fundamental than that which ascribes to sovereign States exclusive and absolute jurisdiction over

their own areas. As a direct and necessary corollary from this premise it follows that any attempt by one state to exercise any sort of authority within the area of another state without its consent is viewed by that state as a violation of its territorial sovereignty.¹¹

So jealous are states of their exclusive territorial jurisdictions, they take umbrage at even the display of a foreign flag, under improper conditions, within its borders; they assert an absolute right to determine what persons or goods shall enter or remain within their borders, and, of course, they view with the highest objection any attempt upon the part of a foreign state to send armed forces across those borders.

Many persons have criticized this public law concept of a State's sovereignty, but the courts of the world have continued to accept and declare it, and, indeed, it is difficult to conceive of a doctrine to displace it which would not create jurisdictional disputes that would keep the international community in continual conflict. In fact, it is correct to say that this reciprocal recognition by States of their several exclusive and absolute terri-

¹¹ A classic statement of this fundamental premise of public law, recognized the world over, is that of Chief Justice Marshall in the case of *The Exchange* (7 Cranch, 116), decided in the Supreme Court of the United States. Marshall said: "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitations not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which would impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source. This consent may be either expressed or implied."

torial jurisdictions is the one great doctrine which has served to maintain such peaceful inter-state relations as the modern world has been able to maintain.

This point has been dwelt upon since it serves to show how serious a violation of international law was involved by the invasion of China by the armies of Japan, and this international wrong was rendered still more serious by the fact that Japan, by a solemn treaty, voluntarily entered into, had promised not only China but the other Powers likely to be directly interested to respect "the sovereignty, the independence, and the territorial and administrative integrity of China."¹²

It hardly seems necessary to extend the discussion of this subject by pointing out the condition into which the international world would be plunged should any support whatever be given to the argument that, when a nation conceives that its safety from a foreign attack will be increased, it is justified in wholly disregarding the sovereign territorial rights of another friendly State. To such a right of self-defense no certain limits could be set either as regards the degree of danger to which the aggressor state might conceive itself to be threatened, or as to the successive areas of friendly states it might consider it necessary to invade or occupy or incorporate within its own national territory in order to satisfy its own demands for complete national safety. If a demonstrative illustration of this be asked for, the recent acts of Japan upon the continent of Asia will serve. Japan annexed Korea in order to render her home islands more

¹² Article One, the Washington Nine Power Treaty.

secure from possible invasion; she felt herself compelled to increase her influence and treaty rights in Manchuria in order to render her Korean possession more secure; she invaded and occupied Manchuria with her troops, and established there a puppet government wholly under her control, in order to increase that security; with the three Eastern Provinces of Manchuria thus subject to her authority, she has found it necessary, in order to protect them, to extend her control over the adjoining Chinese provinces of Jehol and Chahar. And what has been the result? Her fear of Russia is still as great, if not greater, than it was before these territorial extensions of control had taken place, and she is now in constant boundary disputes with her potential foe.

Collateral to, or perhaps a consequence from, the fundamental international law doctrine of exclusive and absolute territorial sovereignty is the international doctrine of the equality of fully sovereign states as members of the international society of States; that is to say, that all sovereign States, irrespective of their size, military and economic strength or other elements of importance, are viewed as legal entities entitled to the same legal rights and under the same legal obligations *vis à vis* other States. This principle is indispensable if a régime of law and order is to be maintained. As Professor Dickinson in his scholarly treatise, *The Equality of States in International Law*, has said: "Equal protection of the law or equality before the law is essential to any legal system. In municipal law it is the alternative to an unguarded tyranny of magistrates. In the law of

nations it is the necessary consequence of the denial of universal empire and of the claim of separate States to live together in an international society controlled by law." ¹³

Japan's Claim to Superiority of Rights over Other States: Her Divine Right Theory. Despite the fact that a recognition of the juridical equality of all sovereign members of the international society of States is a prerequisite to an international system of law and order, there have been States which have advanced views which negate this just and beneficent doctrine. This was true of Germany before the World War of 1914-1918, and it is true of the present Germany. It is also true of the present Japan. Both Germany and Japan have asserted, and now assert, that, intrinsically, by reason of inherent racial qualifications, they are superior to other races of men, and, therefore, that their right to exist, to prosper, and to expand their political powers and jurisdictions, is superior to that of other nations or peoples. Hence it follows, according to their belief, that, if necessary to their own prosperity or advancement in political power, they are justified in disregarding the legal rights and material interests of other peoples who are so ignorant or misguided as not to accept their claims of inherent racial superiority—in other words, that, when dealing with these "lesser breeds," they are not subject to the ordinary and usual canons of justice and humanity.¹⁴

¹³ *Op. cit.*, p. 4. The author draws a distinction between equal rights of States and their equal capacity for rights which it is not necessary here to discuss.

¹⁴ As a sop to justice and humanity, Germany and Japan assert that

The Japanese conviction that, as a people, they are inherently superior to all other peoples, is founded upon the belief that they are the only people among the races of men who are able to trace their origin to a directly divine source, and are thus, in a sense, themselves divine beings. That they regard their Emperor as wholly divine, is well known.

The present constitution of Japan, promulgated by the Emperor in 1889, was mainly drafted by Marquis Ito, and his Commentaries on that written instrument constitute its most authoritative interpretation. In these Commentaries Ito speaks of the Emperor as "Heaven-descended, divine and sacred," and to be revered and obeyed as such. Furthermore, within comparatively recent years, the Japanese have revised and revamped a primitive native cult, and made it into a national religion termed Shintoism, the essential feature of which is worship of the Emperor.¹⁸

This matter of the superiority of merits and of corresponding superiority of rights claimed by the Japanese people is one that has been referred to, earlier in this volume, when the attempt will be made to explain certain of the acts, and especially certain of the arguments, advanced by the Japanese which to others have seemed so absurd as to impugn either the intelligence or the sincerity of the Japanese people—or, should one

the imposition of their cultures upon, and political control over, these inferior peoples will redound to the genuine welfare of these peoples.

¹⁸ See especially the pamphlet *The Invention of a New Religion* by B. H. Chamberlain. See also *The Rise of a Pagan State* by A. Morgan Young.

say, to suggest that the Japanese have an exceedingly low opinion of the intelligence of the persons to whom their arguments are addressed.

Japan's Claim of Vital Interests. Closely connected with Japan's claims that her military and other operations in China have been dictated by considerations of self-defense, is her assertion, frequently made, that her "vital interests" are involved in her Asiatic operations, accompanied apparently by the argument that, where a State's vital interests are at stake, the general obligations imposed by international law or the specific treaty obligations which the State has previously assumed may be disregarded.

The assertion that certain of her "vital interests" was involved in her dealings with the Manchurian provinces of China was made while the Sino-Japanese controversy was being discussed before the Council and Assembly of the League of Nations, and this alleged feature of the controversy was also presented to, and considered by, the League's Lytton Commission.

The author of the present volume is not aware that the Japanese Government has, at any time, furnished a "bill of particulars" as to just what are these "vital interests" which Japan has in Manchuria or in China generally, but there is no doubt that one of these alleged interests is, as earlier referred to, the militarily strategic value of Manchuria to Japan *vis à vis* Russia. The other alleged vital interests, it is certain, relate to the economic importance of Manchuria to Japan and as a possible outlet for a claimed excess of population in the Japanese

home islands. To consider in a factual way the extent or degree to which Japan's welfare is bound up with her relations to Manchuria or to China generally would involve inquiries which lie outside the scope of the present volume, but one or two general observations can be made.

As regards Japan's population problem it can be said that, whether or not a serious one at the present time, and whether or not it can be corrected by a further industrialization of Japan's home economic life, it is certain, as agreed to by all scientific scholars dealing with population problems, that emigration furnishes no real solution to a country with what appears to be an excess of population.¹⁶ As regards the actual or potential economic value of Manchuria or of China generally to Japan, scholars are equally agreed that, regarding the matter simply from the viewpoint of Japan's selfish interests, far better results are likely to accrue to her from an independent and friendly China than can be anticipated to result from a China subject to Japan's will but with a people hostile to her.¹⁷

The Lytton Commission devoted a separate chapter to "Economic Interests in Manchuria," and, as a result

¹⁶ In fact, as declared by the Lytton Commission, "it does not seem from past experience that Manchuria is a region suitable for Japanese emigration on a large scale."

¹⁷ The Lytton Commission in its report with reference to Manchuria says: "No foreign Power could develop Manchuria or reap any benefit from an attempt to control it without the good-will and wholehearted cooperation of the Chinese masses which form the bulk of the population, tilling its soil, and supplying the labor for practically every enterprise in the country." This conclusion regarding Manchuria can be equally held with regard to the whole of China.

of its own inquiries aided by experts, and by memoranda supplied by both the Chinese and Japanese Governments, came to the conclusion that "the economic interests of both countries in Manchuria are not irreconcilable; indeed, their reconciliation is necessary if the existing resources and future possibilities are to be developed to the fullest extent."

The foregoing observations have been indulged in for the purpose of indicating that, viewing the matter wholly from the standpoint of Japan's interests, she is mistaken in her belief that she can benefit economically from her recent acts in Manchuria and in China generally. But, aside entirely from this conclusion, and granting, for purposes of argument, that she could benefit to a high degree from such acts, there remains the question whether, from the viewpoint of international law or of morality, a country is justified in invading another country, and, after militarily occupying it, subordinate its interests to those of its own. Of course, it has no such right. To admit such a plea of national need, or even necessity, would be to admit the law of the jungle into the whole field of international relations,—the simple plan, that they should take who have the power, and they should keep who can. Furthermore, in this matter, what is to be said of the vital interests of China? As regards, in particular, the Manchurian provinces, it is to be noted that, strategically, these territories are of immense value to China, since, throughout her history, it has been from their direction that invasions of China have come. As regards racial

"The greatest of all difficulties confronting China today is, I believe, communism, which has found ready soil for propagation in the unsettled conditions of East Asia and which affects China most seriously, endangering not only her border regions but her internal social order itself. The Red menace is, of course, not confined to East Asia. Suppression of communist activities in our part of the globe and liberation of China from the Red menace is, therefore, a matter of vital importance not only for China but for the stabilization of East Asia and of the world. Herein lies the third point."

These three points, Minister Hirota went on to declare, "must underlie the great undertaking of insuring the stability of East Asia," for the performance of which task, Japan has declared herself responsible.

As will later appear, the Japanese have continued to the present time to stress the importance to them of crushing out communism in China, for, even in the articles of agreement entered into by Japan with Wang Ching-wei, signed December 30, 1939, this undertaking is emphasized.¹⁸

To what extent the crusade of Japan against communism in China rests in fact upon the grounds the Japanese have advanced is not certain. No doubt the crusade is a part of the general policy of Japan with reference to Russia, and also it may be believed that, if Japan can be made to appear as a defender of the world against communism, her actions in China will be viewed

¹⁸ See *post*, pp. 99 ff.

"The greatest of all difficulties confronting China today is, I believe, communism, which has found ready soil for propagation in the unsettled conditions of East Asia and which affects China most seriously, endangering not only her border regions but her internal social order itself. The Red menace is, of course, not confined to East Asia. Suppression of communist activities in our part of the globe and liberation of China from the Red menace is, therefore, a matter of vital importance not only for China but for the stabilization of East Asia and of the world. Herein lies the third point."

These three points, Minister Hirota went on to declare, "must underlie the great undertaking of insuring the stability of East Asia," for the performance of which task, Japan has declared herself responsible.

As will later appear, the Japanese have continued to the present time to stress the importance to them of crushing out communism in China, for, even in the articles of agreement entered into by Japan with Wang Ching-wei, signed December 30, 1939, this undertaking is emphasized.¹⁸

To what extent the crusade of Japan against communism in China rests in fact upon the grounds the Japanese have advanced is not certain. No doubt the crusade is a part of the general policy of Japan with reference to Russia, and also it may be believed that, if Japan can be made to appear as a defender of the world against communism, her actions in China will be viewed

¹⁸ See *post*, pp. 99 ff.

by other peoples in a more tolerant manner, but the fact remains that the ruling classes in Japan and especially the big business interests which exercise such an important influence upon Japan's policies, do view Russian communistic doctrines with great disapproval inasmuch as these doctrines condemn the capitalistic system as economically unsound and ethically unjust. Furthermore, insofar as these communistic doctrines advocate popular or democratic processes of government, they necessarily attack the very basis of the Japanese political system which is founded upon the premise that all legitimate political authority stems from the Emperor.

As for the Japanese charge, repeatedly made, that the Chinese Government, under the control of the Kuomintang and the direction of General Chiang Kai-shek has encouraged the development of communism in China, the following is to be said:

It is true that Sun Yat-sen in his later years, and under important qualifications and conditions, sought the aid of Russia and that for a time the influence of Russian communism was strong in the Kuomintang party. However, as is very well known, near the end of 1928, the Kuomintang broke violently with the communists and purged itself of them, and, following the political unification of China and the establishment of Nanking as its capital, the National Government waged successive military campaigns against the communists in the endeavor to destroy them as a social and political force in the country. It was only when the communist forces were finally driven into the northwest of

China that anything like a *modus vivendi* with them was arrived at. And, coming down to the present time, it is known that it was the continued and increasing aggressions of Japan upon China that finally led to full military cooperation between the Nanking and communist forces in defence of their common country. Also, even as the situation now stands, the National Government of China has not accepted the essential doctrines of the communists. It is furthermore to be noted, that, during the time that the National Government of China was exerting every possible effort to suppress the Chinese communists, Japan was constantly making this task more difficult by reason of her own acts.

In the light of these facts, it is difficult to see what just complaint, in the matter of communism, Japan could bring against the Government of China, even were it to be conceded that there was an international obligation upon the part of China to suppress manifestations of communism within her borders.

In truth, however, under no treaty, and under no principle governing the relations between sovereign States, has Japan had any right to object to acceptance by the Chinese people, or by the Chinese Government, of any social or political principles they might see fit to adopt, nor to the practice of those principles so long as they did not lead to direct attacks, actual or immediately threatened, upon her own rights as a sovereign State. Japan has never presented any evidence that her sovereign rights had been actually attacked or threatened

with attack from Chinese communists, *qui* communists. This last qualification is introduced because, as Chinese, the Chinese communists have been equally indignant with their non-communist countrymen because of the wrongs done to China by Japan.

Chinese Communism Described. Although it has been abundantly demonstrated that Japan's claims with regard to communism in China furnish her with no justification whatever for her military operations in China, it will be of interest, in view of the publicity the subject has received, to state in as few words as possible what, in fact, is the character of the movement which, in China, has been termed a communistic one.

The truth is that what has been termed communism in China is something quite different to Russian communism, and does not warrant the term communism as that term is employed in Japan or other countries of the world. In the United States, for example, it would be regarded politically and socially as a radical left-wing movement especially concerned with agricultural reform.

As to this one can again cite that mine of authentic and impartial information, the Lytton Report. In that Report, speaking with reference to communism in China at the time this Report was prepared, the Commission said that, while there then existed certain completely sovietized areas, and that, within those areas, opposition from the population was forcibly suppressed, elsewhere the communistic program of action consisted

in the cancellation of debts, the distribution among the landless of farms that had been forcibly seized from large private land-owners or from such religious institutions as temples, monasteries and churches, the simplification of taxes, the development of irrigation, the promotion of rural credit institutions and cooperative systems, and the establishment of public schools, hospitals and free dispensaries.¹⁹

One of the most recent accounts of the Chinese communists, so-called, based upon a four months' personal stay among them, is that given by the well-known writer upon conditions in the interior of China, Edgar Snow.²⁰ Mr. Snow points out that, at present, the Chinese communists are devoting their entire thought and efforts to resisting Japan, and are postponing to the future further attempts to introduce their social and economic reforms. As to their doctrines he says that, even where they have been in control they have not sought to establish a régime that would be recognized by Karl Marx as a legitimate product of his ideas. Their main economic objective, Mr. Snow continues, has been to overthrow landlordism, that is, to expropriate the land and the property of landlords and rich peasants, and thus to introduce rural equalitarianism. In other words, the Chinese communists have not sought to collectivize the land and thus advance toward socialism or communism as it

¹⁹ It is to be noted that when the communists were admitted into the Nationalist movement for the defense of China, they agreed to cease to employ such forcible or terroristic methods as they had earlier used in the areas under their complete control.

²⁰ Article entitled "I Went to Red China," in the *Saturday Evening Post*, November 6, 1937.

is known in Russia. In connection with this vesting of private ownership in the small farmers, they have sought to abolish excessive taxes. As a further means of improving the lot of the farmers they have established agencies for supplying credit to them at reasonable rates of interest, and have also brought about the formation of various cooperative enterprises. Compulsory education is rigidly enforced in their armies.²¹

Without attempting to examine further into the doctrines and practices of the Chinese communists, sufficient has been said to indicate that there has been no adequate reason for the intense fear that the Japanese have expressed of their possible spread, unless it be that the Japanese are apprehensive that the existence of these economic views, mildly socialistic as they are, and differing so widely as they do from the communistic doctrines and practices of Russia, will result in closer friendship of China with Russia and a cooperation of the two countries in matters of common international concern.

²¹ In a recent letter to an American newspaper (*The Berkshire Eagle*, February 8, 1940), the well-known writer and authority on things Chinese, Carl Crow, has the following to say with reference to communism in China: "Last summer . . . I made a special study of Chinese communism. I found that there are a very large number of Chinese who call themselves communists but they have no connection with Russia and their so-called communism is nothing more than a liberal agrarian movement tinged with a few mild socialistic ideas. When the movement which they support was started it was more purely communistic, but as the economic evils which brought it into existence were removed the party lost its radical aspects. In Chungking I talked to American, British, French and German newspaper men of long experience in China and they all laughed at the idea of Chinese 'communism' being a menace to anyone. American business men and missionaries living in China are of the same opinion."

Whatever be the exact truth with regard to the Chinese communists, sufficient has been said to show that Japan has had no right, under any doctrines known to modern international law, to demand of China that she should expel communism from her body-politic, or, if herself unable to do this, to permit Japan to send her armies into China for that purpose.

Japanese Plea Based on Anti-Japanese Feeling in China. Somewhat analogous to their objection to the existence of communistic doctrines in China has been the emphasis laid by the Japanese upon the prevalence in China of anti-Japanese feelings. Indeed, if one is to judge by the bitterness and constant reiteration of their complaints upon this point, this failure upon the part of the Chinese to regard Japanese in a sincerely friendly way, has constituted, emotionally at least, the chief grievance which the Japanese have had against the Chinese people.

The author of the present volume does not know of any principle or doctrine of international law which authorizes one State to take measures of force against another State upon the ground that there exist in the latter State sentiments unfriendly to itself. Only if these unfriendly sentiments lead to acts upon the part of the Government or people holding them which violate the treaty or other internationally recognized rights of another State is that State justified in taking steps to bring to an end the commission of such acts. But, however this may be, and aside from the obvious futility of en-

deavoring to change the unfriendly feelings of a people by inflicting upon them further injuries, one would think that a people which finds itself viewed in an unfriendly light by another people would seek to determine the causes of that unfriendliness and endeavor, if possible and feasible, to remove them.

Reasons for Anti-Japanese Feeling in China. The fact, of course, is that, for more than forty years, Japan has, by successive acts of aggression, demonstrated that she has no regard for the welfare of the Chinese people. A complete list of these acts would furnish an indictment of Japan of which history affords almost no parallel in the dealings of one State with another. This attitude and conduct of Japan toward China has been conspicuously shown since the Sino-Japanese War of 1894-5 when she demonstrated her military superiority over China. In pursuance of her extraterritorial rights in China she continued to assert and exercise privileges which could not properly be included within those rights and which no other nation possessing similar extraterritorial rights in China asserted. In 1915, as though to exhibit her contempt for the ordinary rules of international intercourse between sovereign States, she presented her Twenty-one Demands directly to the President of China, instead of through the Ministry of Foreign Affairs, and demanded that the President should keep secret from the other Powers the fact that these demands had been made; and, when the news leaked out that important demands had been made, she offi-

cially denied that they had been presented—a denial the falsity of which she was later obliged to admit. In addition to the military aggressions she has committed upon China since her attack upon Mukden in September, 1931, Japan has permitted her subjects to engage in wholesale smuggling of Japanese goods into North China and has refused to permit the Chinese customs and other officials to take efficient action for the prevention of this smuggling.

Japan's Opium Policies in China. In addition, and in violation of specific treaty engagements, Japan has deluged China with narcotic drugs manufactured and dispensed in, and exported from, areas over which she has had political and administrative control. Indeed, with reference to this last matter it has been officially reported to the Advisory Committee on Traffic in Opium and Other Dangerous Drugs of the League of Nations that, at the present time, nine-tenths of the narcotic drugs which find their way into the illicit traffic have their source of manufacture within areas controlled by Japan. As to this, the following statements from responsible sources may be quoted:

Addressing the League's Advisory Committee in November, 1933, Mr. Stuart J. Fuller, the American representative on the Committee, called attention to the establishment in Manchuria and Jehol, in defiance of Chinese law, of a so-called opium monopoly,— an institution which, as he said, had been aptly characterized as "the largest single venture ever undertaken in the

illicit traffic in narcotics." There could be no question, he said, that this institution had been established for the express purpose of extending and exploiting the smoking of opium.

In the monograph by Mr. Frederick T. Merrill, entitled "The Opium Menace in the Far East," issued in March, 1937, by the Foreign Policy Association of New York, we find it declared that the traffic in China of cocaine and heroin is highly organized and mostly in the hands of Koreans who, of course, are Japanese subjects. Mr. Merrill continues: "These Japanese subjects, when sentenced by the Japanese consular courts, are subjected to penalties so light as to constitute no detriment whatever. The drugs, mostly heroin and cocaine, are reported to have been obtained from Japan, Formosa or Darien. A new source is Tientsin, where numerous Japanese-owned factories producing heroin have been discovered. . . . Aside from the Chinese trafficker, there is overwhelming evidence that the Japanese national is the most sinister character in the illicit drug trade north and south of the Great Wall. . . . That this traffic has been accompanied by and coincident with the military penetration of Manchuria and North China during the last five years has often been pointed out. . . . The drug traffic in the demilitarized zone and in the Tientsin-Peiping area was facilitated by the establishment of a Japanese-supported régime in East Hopei which made possible immense smuggling operations of Japanese goods during the spring and summer of 1936. This 'economic invasion' was part

of the Japanese plan for penetrating south of the Great Wall."

Later on, Mr. Merrill says: "In the East Hopei region, where the Kwantung [Japanese] army has set up a pro-Japanese régime, drug manufacturing has become so widespread that Jehol has been apparently replaced as a source of heroin and morphine for North China."

Concluding his account for the Foreign Policy Association, Mr. Merrill says: "Japan's official apathy in controlling the illicit drug traffic of its nationals in Fukien, North China and Manchukuo is at variance with its successful suppression of the drug menace among its own people. . . . As far back as 1929, the Japanese representative on the Advisory Committee [of the League of Nations], M. Sato, admitted that his Government's inaction in dealing with the drug traffic was inexcusable. It seems that inaction has now become a policy, a continuance of which may well alienate any sympathy which exists in support of Japan's claims to be the guardian of the best interests of China and the cultural leader of Asia."²²

It may seem to some that, in such a volume as the present one, a disproportionate space has been devoted

²² For those who may wish for further information regarding Japan's conduct with reference to the production, sale and consumption of opium and of manufactured narcotic drugs, the reader should consult the proceedings of the League of Nations Opium Advisory Committee, and the recent memorandum prepared in 1939 by Mr. Frederick T. Merrill for the Institute of Pacific Relations, entitled "The Current Situation in China and Manchukuo as Regards Opium and Narcotic Drugs." See also a vivid picture of the opium situation in the Japanese occupied areas of China by Carl Crow in the March, 1940, issue of *Scribner's Commentator*, reprinted in *Readers Digest* for March, 1940.

to these matters of smuggling and narcotic drugs. The writer believes, however, that it is from such facts as have been stated that one is able to obtain the clearest proof of the falsity of Japan's claim to be a friend of the Chinese People, and the surest evidence of what will befall the Chinese should they come wholly under the control of Japan. By her acts already committed, and not by her protestations of good intentions, she must be judged.

Attitude of the Chinese Government toward Anti-Japanism in China. Before leaving this matter of anti-Japanese feelings in China a word needs to be said of the reiterated charge by the Japanese Government that the Chinese National Government has directly stimulated and sought to intensify this feeling. Thus, in his speech to the Japanese Diet on September 5, 1937, we find Foreign Minister Hirota declaring: "The Nanking Government and also local militarist régimes in China have for many years past deliberately undertaken to incite public opinion against Japan as a means of strengthening their own political powers." And we find this charge repeated in the reply of the Government of Japan to the invitation of the Government of Belgium to participate in the Nine Power Conference to be held at Brussels. Here it is said: "The present conflict has been caused by none other than the [Chinese] Government which, for these many years, has been engaged as a matter of national policy in disseminating anti-Japanese sentiments in China and which in collusion with

communist elements menaced peace in East Asia by their virulent agitation against Japan."

In view of the many affronts received by it from Japan, it would not have been surprising had the Chinese Government lent its official aid to the arousing of the indignation of the Chinese people against Japan. In fact, however, it would appear that, until the outbreak in 1937 of the present war, in its efforts, under the most provocative conditions, to satisfy the demands of Japan and to prevent the occurrence of incidents that might furnish excuse for the presentation by Japan upon China of further demands, the Chinese Government, so far from stimulating, used such means as it had within its power to prevent the open expression by its own people of views to which Japan might object. Attention is called to these repressive efforts of the Chinese Government in a most interesting letter to the *New York Times* of September 10, 1937, by the distinguished writer Lin Yutang. In this letter Mr. Lin says: "May I state a few facts? (1) The Chinese Government forbade any mention in the press of the Japanese penetration of Chahar throughout 1933-34, so that, as far as the stealthy conquest of Chahar was concerned, the Chinese people were kept in the dark. (2) The Chinese Government censored all news concerning Japanese smuggling through the 'autonomous' East Hopei régime until the world press took notice of it. (3) Chiang Kai-shek systematically abolished all anti-Japanese boycott organizations wherever he went. (4) The censorship regulations forbade anything in the

press that might 'injure the feelings of a friendly neighbor,' and actually, from the cessation of the Shanghai war in 1932 to the spring of 1937, not a single editorial mention of Japan appeared in Chinese papers. (5) The Chinese Government arrested seven noted writers and leaders of the Anti-Japanese League in the Fall of 1936 and did not release them until a few days ago, after Madame Sun Yat-sen went to the Kiangsu court and said: 'If advocating resistance against Japan is a crime, I am guilty.' That is the 'vicious anti-Japanese campaign' started, according to Mr. Hirota, by the Nanking Government."

Japan's Claim that China is an Unorganized State. During the first weeks of the discussion by the League of Nations of the situation created by the Japanese invasion of Manchuria, the Japanese representatives sought to defend Japan's action by denying that Japan had any aims in China beyond defending her own nationals and their legitimate treaty rights in Manchuria. However, as the hollowness of this representation became evident, as the Japanese representatives could themselves see, some other support for Japan had to be advanced, and this was done when the proposition was presented that, in fact, Japan was under no obligation created by treaties or the Covenant of the League, or imposed by general international law to respect any of the sovereign or territorial rights of China because China did not possess such an organized government as it is necessary for a State to possess in order to qualify

it as a member of the international society of States or as a member of the League of Nations.

This defense of Japan, which was in the nature of what lawyers call "confession and avoidance," was advanced by the Japanese representative at the meeting of the Council of the League held on February 19, 1932. In the course of a long exposition of Japan's case, in which he frankly admitted that, had China been an organized State, Japan's actions would have been different, the Japanese representative went on to say:

"China was admitted to membership of the League twelve years ago because she was regarded as an organized country with a regular administration. It was in that capacity that she was admitted. Events, however, have brought about a complete change in China. There have been wars between the Chinese generals and this has led to a state of complete anarchy, with the result that the rights and interests of foreigners ensuing from various treaties and conventions have ceased to be protected. That is why the countries with interests in China have often been compelled to employ methods which would not have been permitted if the same difficulties had occurred elsewhere in a really organized country."

Aside from the matter of the correctness or the incorrectness of the statement that China was not entitled to enjoy the rights of an organized State—a question of fact presently to be considered—there is to be noted the absurdity of Japan's advancing this allegation and argu-

ment in the light of several ways in which, up to that time, Japan had herself dealt with China as a fully organized and sovereign State. At the very time that this statement was made that other States were under no obligation to deal with China as a co-member of the international society of States, Japan was in full diplomatic relations with China, and was continuing to demand that whatever controversies existed between herself and China should be dealt with by direct negotiations between the two Governments and without any interference or intervention by any third Power. Furthermore, only several weeks before this Japan had participated in a unanimous vote of the Assembly of the League of Nations which had made China a member of the Council of the League—an election which added prestige to China and certainly was an unequivocal recognition by all the fifty or more nations participating in the voting (including Japan) that China merited full recognition as a sovereign State.

Superadded to the foregoing is the fact that this belated charge by Japan in February, 1932, was examined and declared without validity by the Lytton Commission.

Finally, upon this point it may be observed that, instead of China being in a condition that would warrant her not being treated as a sovereign State, Japan herself exhibits to the world a type of government which, should they choose, would warrant other nations in refusing to have formal relations with her. For the fact is that, in order that a State may have formal relations

with other States, it must possess an organ of Government whose declarations and undertakings carry with them an assurance that they represent the authoritative will of that Government and will be so regarded by the people of the State of which that Government is the agent. In truth, however, as is well known, and has been admitted by many Japanese themselves, in Japan the armed forces not only dictate to the civil authorities many of the foreign as well as the domestic policies of the State, but do not hesitate to act without authorization from, and even in direct violation of, the international undertakings of the civil authorities. Indeed, the Japanese constitution itself, supplemented by an imperial ordinance, contains a provision which has made it possible for the military and naval authorities to exercise an independent authority, since these branches of the government are made directly responsible to the Emperor who possesses the supreme authority of the Japanese State. Moreover, the consent of these authorities is indispensable before a Cabinet can be formed, and, since, without a Cabinet, the constitutional structure provided for by the Constitution cannot operate, the military and naval forces are placed in a constitutional position to dictate who shall constitute, and what shall be the policies of, a new Cabinet, and, by a threat to withdraw its representatives from an existing Cabinet, unless their policies are pursued, can dictate the policies of an existing Cabinet or bring about its dissolution.

Dr. W. W. Yen, at the March, 1932, meeting of the

Council of the League of Nations, was justly indignant that, in the light of Japan's own record, her representative should charge China with being an unorganized State. He said:

"The Japanese representative speaks of a well-organized State. I wonder whether a State like Japan, with the army and navy running amok and out of the control of the Government, is an organized State. When her diplomats come to the Council Table and give promises one after another, apparently in sincerity and good faith, and when these same promises are violated the next day, does that represent a well-organized Government? The Japanese gave solemn promises to the Governments of two or three great Powers not to go to Chinchow, and in a few days they were there. Does that represent a well-organized Government? Our people have been massacred in Japan itself during the earthquake, and over a hundred innocent Chinese merchants were killed in Korea only in the past year or so in pogroms. Does that represent a well-organized Government?"

Japan's Fear of the Strong China which was Developing. Although the Japanese representative at the Council of the League of Nations in 1932 deemed it worth while to make the charge that China was not an organized State, and although Japanese spokesmen since that time have repeated the charge, the fact is that what Japan has feared and objected to has been not a weak but a strong China, and there appears to be abundant

reason for asserting that one of the reasons why Japan's attack upon China's very existence was not postponed beyond 1931 or 1937, was that Japan saw China rapidly becoming a prosperous and powerful State.

The Lytton Commission noted its conclusion, in 1932, that "the dominating factor in China is the modernization which is slowly taking place," and went on to say, "China today is a nation in evolution, showing evidence of transition in all aspects of national life." And, alongside this measured and considered judgment may be placed the opinion expressed by Mr. Julian Arnold who for thirty-seven years has represented the United States Government in China as its Commercial Attaché. From statements made by him in public addresses in 1938 and 1939, as to conditions in China in 1937, when the present Sino-Japanese war was begun, the following are selected for quotation:

"Japan's invasion of China is the most appalling tragedy in all of human history, because it was launched at a time when the most populous of nations was at the threshold of a huge constructive modernization program."

"No other country on the face of the earth had made such phenomenal strides in modernization as had China during the past ten years."

"During the past few years China rehabilitated existing [railway] lines and was engaged in construction of several thousand miles of new railways."

"During the past decade China constructed 10,000

miles of highways, mostly in sections of the country which previously had had no roads."

"The improvement of China's waterways was well advanced by 1937. Existing steamship lines were reorganized and improved."

"China had installed a network of airlines making it possible to cover all important cities by regular schedules. In 1936 they carried 27,000 passengers."

"Wireless telegraph stations were installed in the principal cities."

"China made greater progress in the installation of modern industrial plants during 1936-1937 than at any other time in her history."

"During the past ten years more cities and towns were reconstructed in China than in any other country in the world for a similar period."

"Improvements among rural masses during the years 1932-1937 were a striking factor in effectively combating communistic activities."

"With the beginning of 1937 China was definitely headed for currency stabilization, uniform currency throughout the country, and adequate provision for refunding her outstanding foreign and domestic loans. Improved national credits were evidenced by the resumption of foreign loans and credits by foreign countries, especially in long term credits to government organs for construction projects."

"Following the Revolution of 1911, China suffered serious internal disruptions for two decades, but by

1930 conditions began definitely to improve and by 1937 national unification became a reality."²³

Cultural Developments in China and Japanese Reaction to Them. Mr. Arnold, in the public addresses from which the foregoing quotations have been taken, was concerned with the economic and other changes that had taken place and were taking place in China when Japan, in 1937, began her war upon China. Had he desired to do so, he could have dwelt upon the equally great changes which had taken place and were in full process of advancement in the cultural life of China. There had been the New Culture or New Thought Movement, largely under the inspiration of the eminent Chinese philosopher, Dr. Hu Shih, at present Chinese Ambassador to the United States, which had represented a veritable renaissance in China; there was in progress the movement for mass adult education under the direction of Dr. Y. C. James Yen, and there had been an enormous increase in China of institutions of learning. In 1931, pursuant to a resolution adopted by the Council of the League of Nations, the International Institute of Intellectual Cooperation sent a mission composed of educational experts to China for a study of educational agencies and pedagogical methods in China. In its report, delivered in 1932 and entitled "Reorganization of Education in China," this mission

²³ In an address entitled "Reconstruction in China," published by The Chinese Cultural Society of New York, former Chinese Ambassador to the United States, Dr. S. K. Alfred Sze, gave, in 1934, an impressive account of the constructive changes taking place in China.

began with the statement: "The last years have shown great progress in the domain of education in China: the number of schools as well as of teachers and pupils increase yearly, new scientific institutions are built, programs and methods of teaching are modernized." In another place in its report, the Mission declared: "In the last twenty years university education in China has advanced with extraordinary rapidity. The most superficial observer must be struck by the influence which it has exercised upon the life and thought of important strata of the population. Distinguished scholars have received part, or all, of their higher education in Chinese universities, and, in their turn, have taught in them; the personnel of the Civil Service, central and local, and of teachers in secondary schools—both key professions—is largely recruited from them. Their contribution to the advancement of knowledge has, in certain fields of study, been of genuine significance. It is not an exaggeration to say that modern China is, to a large and increasing extent, the creation of her universities. These facts are fundamental."²⁴

In 1935, China's Minister of Education, Mr. Wang Shih-chieh, reported that, since the establishment of the Republic in 1912, the number of institutions of higher

²⁴ It is of interest to note that this Mission was composed wholly of European experts, and that they expressed considerable concern that educational developments in China were, to a dominant extent, under American influences. It is also of interest to point out that Mr. A. W. Hummel, an eminent sinologue and Chief of the Division of Chinese Literature of the Library of Congress at Washington, has expressed the opinion that the cultural renaissance that has taken place in China represents a revolution that may prove more significant than the political revolution which overthrew the old imperial system.

education had increased twenty-seven times, and the number of students one hundred times; that, during that period, the number of middle schools had increased to a number five times as great and the number of pupils eight times as great; and that the number and attendance at elementary schools had also greatly increased but not in such great proportions.²⁵

This cultural development in China appears to have attracted the especial attention of the Japanese. At any rate, this would seem to be indicated by the extent to which the Japanese armed forces in China have directed their efforts to the destruction of Chinese educational and other cultural institutions. The evidence as to this is conclusive. In a report of a preliminary survey made by the Library Association of China in 1938, it is stated: "According to a recent survey, 82 out of 114 higher institutions of learning are in war or [Japanese] occupied areas, and 54 of them have either been completely or partially destroyed by Japanese invading forces. Of the 114 institutions, only 27 still remain at their original locations, but not a few of them are contemplating to remove to safer zones as the war area enlarges. The valuable libraries and laboratories of many institutions have been laid waste. Similarly, many cultural organizations and libraries have either been totally demolished

²⁵ "Before the [present] war there were 108 institutions of higher learning [in China], 42 of which were universities, 34 independent colleges, and 32 technological and professional schools. Of these, 29 were established by the National Government, 29 by provincial and municipal governments, and 50 by private individuals or corporations (including Christian organizations)." *Bulletin*, October, 1939, of the China Institute in America.

or disorganized. Institutions situated in war or occupied areas have been seriously paralyzed and rendered out of function. Their valuable contents are being appropriated at will. Not a few of them have been converted into Japanese barracks." ²⁰

This account of the manner in which the Japanese have dealt with China's cultural institutions has led the author of this volume somewhat outside the sphere of inquiry he had assigned to himself—which had not included an account of the specific events of the Sino-Japanese war—but, in view of the assertions by the Japanese that they had viewed with extreme apprehension a continued disorganization in China, it has been deemed pertinent to indicate what, in fact, has been the attitude of the Japanese toward those movements in China which could be expected to lessen whatever disorganization still existed in that country.

Japan's Efforts to Prevent the Creation of a Politically Unified China. The statement has been earlier made that, instead of objecting to a disorganized and weak China, Japan has feared a politically unified, well-organized, and correspondingly strong China. Aside from the fact that her acts, since 1937, have demonstrated this, is the further fact that, so far from extending aid to a China struggling for political unity, Japan, for years, had actively and continuously intervened in China to prevent that unity from being realized. Surely, Mr. Julean Arnold who has spent the last thirty-seven years

²⁰ See *China Institute Bulletin*, November, 1938, p. 51.

in China in an official position that has required him to obtain current information of events throughout China, is qualified to speak authoritatively upon this point. He says: "Ever since Japan launched her infamous Twenty-One Demands on China in 1915, she has been active in efforts to prevent national unification or economic developments under Chinese auspices. It was Japan's policy to play one faction in China against another, in beating for time while feverishly struggling to equip herself to become the feudal master with the Chinese as serfs. This imputation is borne out by a statement which emanated from Tokyo on March 1, 1937. According to this pronouncement, the Shanghai Japanese Chamber of Commerce pled with their Government and people to change their traditional attitude and rectify their erroneous policies. They urged the adoption in their place of a policy of peaceful and friendly cooperation. Surely, this is a definite acknowledgment of a habitually disruptive rather than a helpfully constructive attitude toward China."

A full presentation of the many ways in which Japan has interfered with, rather than aided, China in her past efforts to become a strong and prosperous political unit, would require many pages of historical exposition, and, therefore, cannot be here attempted, but there can be spared space to state the conclusions of men who, like Mr. Arnold, have been fully cognizant of Japan's conduct.

In full agreement with Mr. Arnold is Dr. Paul S. Reinsch, a man of accurate and distinguished scholar-

ship, who served as American Minister to China from 1913 to 1919. In his volume entitled *An American Diplomat in China*, he says:

"Japan has used every possible means to demoralize China by creating and sustaining trouble; by supporting and financing the most objectionable elements, particularly a group of corrupt and vicious military governors akin to bandits in their methods; by employing instigators of trouble; by morphia and opium; by the corruption of officials through loans, bribes and threats; by the wrecking of native banks and the debasing of the local currency; by illegal export of the copper currency of the people; by local attempts to break down the salt administration; by persistent efforts to prevent China from going into the [World] War and then seeing to it that China was never in a position to render to the common cause such aid as would be in her power and as she would willingly render if left to herself; finally, by utilizing the war and the preoccupation of the Allies to enmesh China in the terms of a secret military alliance."

At another place in his book Minister Reinsch says:

"The Japanese were ready to take advantage of and to aggravate any weakness which might exist in Chinese social and political life. They would fasten like leeches upon any sore spot. The tendency toward rebellion and brigandage, the counterfeiting of bank-notes, the corruption of officials, the undermining of the credit of important private and public enterprises, the furnishing of

more dangerous drugs when opium was forbidden—in connection with such mischiefs individual Japanese have been active to the great damage of the Chinese. But, though it would be unjust, of course, to charge up this meddling to the Japanese nation as a whole, the connivance of their military government was a fact.”²⁷

If one should wish for further proof of the unwillingness of the Japanese to see developed a strong and prosperous China, and to seek advantages to themselves from any weaknesses that the Chinese Government or the Chinese people might display, evidence of this can be seen in the actions of the Japanese to stimulate and profit by the sale and non-medicinal use of narcotic drugs in China; in their extensive smuggling operations in China; and in their efforts to prevent the successful operation of a nationally managed currency. Also, it can be shown that, within the areas over which she has obtained military control, Japan has announced her plans for commercial and industrial development, which appear almost wholly concerned with possible benefits to be derived by herself, and very little with the genuine welfare of the peoples of these areas.²⁸

²⁷ *Op. cit.*, pp. 336, 127.

²⁸ Among the Memoranda supplied to the Lytton Commission by Dr. V. K. Wellington Koo is an elaborate one entitled “Japan’s Plots and Schemes against the Unification of China.”

CHAPTER THREE

JAPAN'S REAL AIMS AS AVOWED

Thus far in this volume the various claims which Japan has advanced in attempted justification of her acts in and with reference to China have been examined. The attempt will now be made to state what, in fact, appear to be her real aims in Eastern Asia. That these aims are far different from those implied in her attempted justifications is certain.

To a very large extent Japan's actions since 1915, when she presented her Twenty-One Demands upon China, and especially her acts since September, 1931, when she began her invasion of China, speak for themselves and indicate her determination to bring all China under her effective political and economic control. However, one is not left to depend upon these objective facts, for there have been a considerable number of declarations, officially made, by the statesmen of Japan which indicate the extent of her ambitions. In what follows, it will be assumed that the reader is sufficiently aware of what has actually occurred during the last few years, so far as Japanese military operations in China are concerned, and the discussion will be limited to the significance of the official declarations which have been made by the Japanese with reference to these operations. These declarations, it will be found, have

been widely inconsistent with the various earlier attempted defenses and explanations of Japan's acts, but, when examined with care, do furnish abundant material for determining what, in fact, Japan is seeking to realize in the Far East.

During the first months succeeding to her invasion of Manchuria in September, 1931, Japan asserted that she was acting only for the protection of her nationals and their properties in China; that, as soon as this end was secured, her troops would be withdrawn; and that she had no other ulterior or political purposes, and certainly none that would involve any permanent violation of China's territorial or administrative integrity.

With the establishment and prompt recognition by Japan of the puppet State of Manchukuo in 1932, and, in September of that year, the signing of a treaty between Japan and Manchukuo which placed the latter under the effective military control of the former, it was demonstrated that Japan did not, in fact, intend to respect the territorial and administrative integrity of China, for thus, upon Japan's initiative and with her support, a vast and important area of China was, in Japan's view, to be deemed separated from China and entitled to be regarded as an independent and sovereign State.¹

For a time it was thought that Japan would be content with a military occupation of the Manchurian provinces of China and their separation from China.

¹ As to the facts attending the establishment of the so-called State of Manchukuo, see the report of the Lytton Commission.

However, before long, not only did the Japanese troops invade and occupy the neighboring Chinese provinces of Jehol and Chahar, but crossed the Great Wall of China and entered what is known as North China. Still further, by her attack upon Shanghai, Japan extended her military operations to the Yangtze Valley in the center of China. After long and fierce fighting, a *modus vivendi* in the nature of an armistice was arrived at which brought open warfare to an end in the Shanghai region, and, in May, 1933, open warfare between the Chinese and Japanese forces in North China was, in form at least, brought to an end by the so-called Tangku Truce, which was a military agreement between the Japanese and Chinese military commanders 'on the spot.'²

It was at about this same time that Japan gave notice of her withdrawal from the League of Nations. This notice was given on March 27, 1933.

Japan's Statement of April 17, 1934: Amai Statement.
The well-known statement of Rabclais that appetite often increases with the eating was exemplified not only

² With reference to this agreement the Chinese Government issued a statement which, after referring to the concessions to the Japanese which the Chinese commanders had been compelled to make, went on to say: "Needless to say it is most painful to examine this document. However, as it is confined to military matters and touches upon no political issues, it does not in the least affect the fundamental policy which the Chinese Government has adopted. China will seek a just and equitable settlement of the whole situation in "the Far East under the same principles which have hitherto guided her efforts in this regard and which have been upheld by practically all the nations of the world." This last statement had evident reference to the resolutions adopted by the League of Nations in condemnation of Japan.

in the continuously enlarging areas of China brought under Japanese military control, but in the broadening of Japan's avowed policies with regard to China and, in general, with regard to all the Far East. This became especially manifest, and, to other nations with Far Eastern interests, alarming, when, on April 17, 1934, the Official Spokesman of the Japanese Foreign Office in Tokyo issued a public statement which, in effect, notified these other nations that Japan would assert a right to determine, in the future, what relations they should be permitted to have with China. After referring to the special responsibilities which Japan had in Eastern Asia, the statement asserted that it was Japan's mission to maintain peace and order in that region, and that, in doing so, she would act on her own responsibility and would share this responsibility with no other country but China. The statement then continued: "We [the Japanese] oppose, therefore, any attempt on the part of China to avail herself of the influence of any other country in order to resist Japan. We also oppose any action taken by China calculated to play one Power against another. Any joint operations taken by foreign Powers even in the name of technical and financial assistance, at this particular moment after the Manchurian and Shanghai incidents, are bound to acquire political influence. . . . Japan, therefore, must object to such undertakings as a matter of principle, although she will not find it necessary to interfere with any foreign country's negotiating individually with China on questions of finance or trade as long as such negotia-

tions benefit China and are not detrimental to peace in Eastern Asia." (Upon which matters, the necessary implication was, Japan would definitively decide.)

The foregoing statement, it was declared, was being sent to all Japanese envoys abroad for their guidance.

Three days later, on April 20, a further statement was issued which, while it asserted that Japan did not intend to interfere with the rights of third Powers in China, and that she did not intend to deviate from the principle of the Open Door, reiterated that Japan would "object to having other Powers, regardless of the form or pretext, take any action which may lead to disturbance of the peace of East Asia." Furthermore, in a statement given to the press, the Japanese Ambassador to the United States came out with the flat assertion that "Japan must act and decide alone what is good for China."^a

British and American Replies to this Statement. Here was an assertion by Japan of a general suzerainty over Eastern Asia of which China and the Western Powers were asked to take notice. Space will permit quotation from only some of the representations made by the Western Powers to Japan with reference to the position that she had asserted for herself.

Great Britain, as reported by her Foreign Secretary to Parliament, communicated to Japan that "His Majesty's Government naturally could not admit the right of Japan alone to decide whether any particular

^a See the Washington (D. C.) *Evening Star*, April 22, 1934.

action, . . . promoted such danger [to peace in the Far East] if that had indeed been the implication of the [Japanese] statement, which they did not believe."

On April 30, the American Department of State made public a statement, which, in part, read as follows:

"The United States has with regard to China certain rights and certain obligations. In addition, it is associated with China or with Japan or with both, together with certain other countries, in multilateral treaties relating to rights and obligations in the Far East [the Nine Power and other Washington treaties of 1922], and in one great multilateral treaty to which practically all the countries of the world are parties [the Paris Peace Pact.] Treaties can lawfully be modified or be terminated only by processes prescribed or recognized or agreed upon by the parties to them. . . . In the opinion of the American people and the American Government, no nation can, without the assent of the other nations concerned, rightfully endeavor to make conclusive its will in situations where there are involved the rights, the obligations and the legitimate interests of other sovereign States."

From the foregoing it is seen that the other nations did not, for a moment, admit that Japan had a right to arrogate to herself the sole and conclusive determination of what policies should be pursued by them in the Far East. Upon the other hand it is to be noted that, despite certain explanations which she gave with regard to the statement of her Foreign Office Official Spokes-

man, Japan did not withdraw or essentially modify that statement.

United States Notes to Japan, October 6, 1938 and December 31, 1938. By her continued and broadened military operations, and especially by her actions after the outbreak of large scale warfare, in July, 1937, Japan has not only shown a disregard for her own treaty promises and the dictates of humanity, but has exhibited little consideration for the rights of neutrals in China. The outstanding instances of the last have been the bombing, machine-gunning and sinking of the United States gunboat *Panay* and three steamers belonging to the Standard Oil Company, the bombing and serious wounding of the British Ambassador to China, the rapine and slaughter of thousands of men, women and children, the wholesale sacking of the city at the time of the capture of Nanking, and the unnecessary interference with the conducting of their legitimate businesses by nationals of neutral Powers. These and many other acts by the Japanese military forces in China have given rise to hundreds of protests by the interested Western Powers, and especially by the United States.*

Aside from acts illegal under international law and treaties, Japan, while continuing to assert that she intends to abide by the principle of the Open Door, has,

* It has been widely reported, without official contradiction, that more than six hundred protests and claims have been filed with the United States Government by American nationals in China based upon alleged illegal acts by the Japanese. Japan acknowledged her liability in the case of the sinking of the *Panay* and paid in cash a very considerable sum in settlement of this liability.

in fact, shown an almost entire disregard of this principle. The manner and extent to which she has shown this disregard was stated in clearest terms, and at length, in the Note which, on October 6, 1938, the American Ambassador to Japan presented to the Japanese Minister for Foreign Affairs. Again, in a Note communicated to the Japanese Foreign Minister, on December 31, 1938, the American Government expressed its concern that American nationals and American trade in and with China were being so grossly interfered with, and discriminated against, to the advantage of Japanese trade. Upon this point, the American Note of December 31 said:

"In the light of facts and experience the Government of the United States is impelled to reaffirm its previously expressed opinion that impositions of restrictions upon the movements and activities of American nationals who are engaged in philanthropic, educational and commercial endeavors in China has placed and will, if continued, increasingly place Japanese interests in a preferred position and is, therefore, unquestionably discriminatory, in its effect, against legitimate American interests. Further, with reference to such matters as exchange control, compulsory currency circulation, tariff revision and monopolistic promotion in certain areas of China, the plans and practice of Japanese authorities imply an assumption on the part of those authorities that the Japanese Government or the régimes established and maintained in China by Japanese armed forces are entitled to act in China in a capacity such as

flows from rights of sovereignty and, further, in so acting to disregard and even to declare non-existent or abrogated the established rights and interests of other countries, including the United States. The Government of the United States expresses its conviction that the restrictions and measures under reference not only are unjust and unwarranted but are counter to the provisions of several binding international agreements, voluntarily entered into, to which both Japan and the United States, and in some cases other countries, are parties."

Japan's Repudiation of Treaty Obligations. Aside from and, indeed, more significant than, the injuries resulting to the Chinese and to the nationals of other Powers in China, was the implication conveyed, and, in some cases, stated in direct language, that the Japanese Government considered itself no longer bound by the treaties and other international agreements into which it had voluntarily entered.

As early as January, 1933, Count Uchida, then Japanese Minister for Foreign Affairs, in the course of an address to the Japanese House of Peers, indicated that Japan, though still a Member of the League of Nations, did not consider herself bound by provisions of the Covenant of the League as understood and applied under ordinary circumstances. He said:

"The Japanese Government believe that as long as the League is concerned with questions relating to China, a certain elasticity should be allowed in the

operation of its Covenant in view of the exceptional and abnormal conditions of that country. In point of fact, various principles of international law and usage governing ordinary relationships between different States are, in practice, considerably modified when applied to China. The Covenant of the League cannot remain exceptional to that rule.”⁶

Japan's Declaration of a "New Order" for East Asia. The position that Japan was preparing to take with reference to the binding force upon her of existing treaties to which she was a party, as adumbrated in the statement which has been quoted, was placed in more definite form, and linked with a conception of a "New Order" in the Far East, in the Note of November 18, 1938, which the Japanese Minister for Foreign Affairs handed to the American Ambassador to Japan in reply to the American communication of October 6, 1938. In this Japanese Note the following remarkable statement was made:

"Japan at present is devoting her energy to the establishment of a new order based on genuine international justice throughout East Asia, the attainment of which end is not only an indispensable condition of the very existence of Japan, but also constitutes the very foundation of the enduring peace and stability of East Asia. It is the firm conviction of the Japanese Government that in the face of the new situation, fast develop-

⁶ The text of this address appeared in the *New York Times* of January 21, 1933.

ing in East Asia, any attempt to apply to the conditions of today and tomorrow inapplicable ideas and principles of the past neither would contribute toward the establishment of a real peace in East Asia nor solve the immediate issues."

Reply of the United States to this Declaration. It is by no means surprising that the United States and Great Britain should have joined issue with Japan upon such a proposition as was thus stated, for it is at once seen that, should this proposition not be denied, the way would be opened to Japan to repudiate any and all treaty obligations with reference to the Far East which she might deem it to her interest to repudiate.

To a refusal to accept as in any degree valid the contention which Japan had advanced was devoted a considerable part of the Note of December 31, 1938, which the American Government communicated to Japan.

In this Note the American Government recognized that changes in the Far Eastern situation had taken place but pointed out that Japan had been responsible for many of these changes, and that, in so acting, she had been regardless of her treaty pledges. After referring to the fact that the Powers with interests in the Far East, in their dealings with one another, had invariably taken into consideration past and present facts, and had, in the treaties which they had mutually entered into, made provisions intended to facilitate advantageous developments, the Note went on to say:

"In the light of these facts, and with reference especially to the purpose and character of the treaty provisions from time to time agreed upon for the very definite purposes indicated, the United States Government deprecates the fact that one of the parties to these agreements has chosen to embark—as indicated both by action of its own agents and by official statements of its authorities—upon a course directed toward the arbitrary creation by that Power by methods of its own selection, regardless of treaty pledges and the established rights of other Powers concerned, of a new order in the Far East. . . . This [American] Government is well aware that the situation has changed. The Government is also well aware that many of the changes have been brought about by action of Japan. This Government does not admit, however, that there is need or warrant for any one Power to take upon itself to prescribe what shall be the terms and conditions of a 'new order' in areas not under its sovereignty and to constitute itself the repository of authority and the agent of destiny in regard thereto."

Regarding the application of existing treaties to the changed conditions in China, the Note declared:

"The Government of the United States has at all times regarded agreements as susceptible of alteration, but it has always insisted that alterations can rightfully be made only by orderly processes of negotiation and agreement among the parties thereto. The Japanese Government has, upon numerous occasions expressed itself as holding similar views. . . . The people and

Government of the United States cannot assent to the abrogation of any of this country's rights or obligations by the arbitrary action of agents or authorities of any other country."

British Reply. In its Note to Japan, of January 14, 1939, the British Government was equally emphatic in its rejection of the claim of right by Japan to disregard her treaty commitments because of changed conditions. The essential character and origin of the "new order" to which Japan had appealed was described in these terms:

"His Majesty's Government are at a loss to understand how Prince Konoye's assurance that Japan seeks no territory and respects the sovereignty of China can be reconciled with the declared intention of the Japanese Government to compel the Chinese people, by force of arms, to accept conditions involving the surrender of their political, economic, and cultural life to Japanese control, the indefinite maintenance in China of considerable Japanese garrisons and the virtual detachment from China of the territory of Inner Mongolia.

"For their part, His Majesty's Government desire to make it clear that they are not prepared to accept or to recognize changes of the nature indicated, which are to be brought about by force. They intend to adhere to the principles of the Nine Power Treaty and cannot agree to a unilateral modification of its terms.

"They would point out that until the outbreak of the present hostilities, the beneficial effects which the

Treaty was expected to produce were steadily being realized. The Chinese people were maintaining and developing for themselves an effective and stable government and the principle of equal opportunity for commerce and industry of all nations was bringing prosperity to China and to her international trade, including that with Japan. Therefore His Majesty's Government cannot agree, as suggested in Japan, that the Nine Power Treaty is obsolete or that its provisions no longer meet the situation, except in so far as the situation has been altered by Japan in contravention of its terms."

The Doctrine of Rebus sic Stantibus. It is an interesting fact that, although Japan, through her Foreign Office, had appealed in substance to a doctrine of international law known as *clausula rebus sic stantibus*, or, more simply, *rebus sic stantibus*, no direct reference to this doctrine was made, nor was the doctrine adverted to in the American or British communications. However, a word or two with regard to this doctrine will not be out of place.

This doctrine has a recognized place in the corpus of international law, though commentators have found great difficulty in fixing with any degree of preciseness the circumstances under which it may properly be appealed to or the modes to be employed when its application is sought.

Stated shortly, the doctrine is to the effect that all treaties and other international agreements are to be construed to contain the tacit but necessarily implicit

provision that they are to remain in force only so long as the conditions which furnish their *raison d'être* remain in being. The necessity or reason for this presumption is held to be created by the fact that, in the absence of express provisions for modification or annulment in the agreements themselves, international law provides no compulsory juridical means for determining when these agreements shall be deemed in part or in whole no longer reasonably operative as between the parties to them, and that, none the less, international conditions do, in fact, often so change that international agreements become unreasonably oppressive to one or all of the parties to them.

The fact that treaties do, at times, become unjust or unreasonable, and, at times, provocative of international strife, was recognized by the framers of the Covenant of the League of Nations, and led to the inclusion in that instrument of Article Nineteen which provides that "the Assembly of the League may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world." For reasons which it is not necessary here to discuss, this Article has been unfruitful of results, but the fact that it was included in the Covenant has a significance.

It is at once apparent that the force of the fundamental principle of international jurisprudence and morality that interstate agreements are to be respected by the parties to them—*pacta sunt servanda*—will be

greatly weakened unless the doctrine of *rebus sic stantibus* is confined within strict and narrow limits.

Upon this point one has to rely largely upon the personal opinions of international law writers and upon what have been the reactions of States adversely affected when this doctrine has been advanced.

International jurisprudential practice, unfortunately, furnishes but few litigated cases in which the doctrine has been discussed. However, the literature dealing with the subject is a voluminous one, and is concerned not only with the proper limits of the doctrine, but with the proper mode for advancing and applying it. The present writer cannot, of course, attempt at this time to survey or fully to summarize the results of these discussions, but it will be possible to state certain conclusions which have found general acceptance, and to consider their application to the position that has been taken by Japan that, because conditions in East Asia have changed, there is needed a "new order" in that area, to which the treaties of yesterday and today no longer apply and, therefore, may be disregarded.

The statement is justified that there is an agreed opinion of international jurists that the doctrine of *rebus sic stantibus* has no proper application unless it can be said that it could not have been the intention of the parties to the agreements concerned, at the time that these agreements were entered into, to have their provisions applied to the new situation that has arisen. In other words the changes upon which an application of the doctrine may be predicated must be of a funda-

mental character, and such as to render the treaty provisions either impossible of fulfilment, or such as to remove the very reasons for entering into the agreement.

There would also seem to be a consensus that, even when a situation arises which, it is alleged, justifies a resort to the doctrine of *rebus sic stantibus*, it is not proper that the State advancing the doctrine should, by a unilateral act, declare the treaty no longer binding upon itself, but that it should submit its claim to the other party or parties to the agreement and consent that the validity of its claims should be determined by one of the peaceful and orderly processes which international law and practice provide for the settlement of international controversies.

One of the most scholarly and objective, as well as the most recent, discussions of this doctrine of *rebus sic stantibus* is that resulting from the Research in International Law which is being carried on under the auspices of the faculty of the Harvard University Law School, and is to be found in the report on *The Law of Treaties*, issued in 1935. The reports resulting from this Research, carried on by a group of most eminent international jurists, take the form of stating, in somewhat the form of a code, the conclusions reached. The propositions stating the conclusions thus reached are accompanied and supported by extended comments upon, and an examination of the literature relating to, the propositions stated. The proposition relating to the doctrine of *rebus sic stantibus*, as stated in the Report on the Law of Treaties, is in the following words:

"A treaty entered into with reference to the existence of a state of facts the continued existence of which was envisaged by the parties as a determining factor moving them to undertake the obligations stipulated, may be declared by a competent international tribunal or authority to have ceased to be binding, in the sense of calling for further performance, when that state of facts has been essentially changed."

The proposition goes on to declare that, pending agreement by the parties upon, and decision by a competent international tribunal or authority, the party seeking release from its commitments may provisionally suspend the performance of its obligations. This phase of the question has not arisen in the Far East, and, therefore, need not be discussed.

Sufficient has now been said to enable one to consider to what, if any, extent, Japan has reason or jurisprudential authority for her claim that she should not be held to observance of the obligations freely assumed by herself when she signed the Nine Power Treaty of 1922.

As to this there can be but one answer, and that is that the claim is an improper one.

In the first place Japan does not come forward with clean hands, for, as is adverted to by the American Government in its Note of December 31, 1938, the changes in the situation in the Far East since 1922 have, in large measure, resulted from Japan's own acts. And these acts, it may further be observed, have themselves been in violation of the Nine Power Treaty.

Moreover, whether judged from the standpoint of international law or from that of simple morality and humanity, they have been of a grossly illegal and cruel character. In fine, the position is that Japan has changed conditions in China by means of acts, the most important of which have been in violation of her commitments embodied in the Nine Power Treaty, and now advances the proposition that, because these changes have been brought about, she should no longer be held to be obligated by the treaty.

It is furthermore to be observed that Japan has made no suggestion that the question whether conditions have so changed in the Far East as to make desirable a modification or annulment of the Nine Power Treaty should be a subject of discussion by the parties to that treaty although the treaty itself provides that there should be such a discussion. Much less has Japan suggested that an international tribunal should pass judgment upon her claim that present conditions render no longer applicable the provisions of the Nine Power Treaty. Indeed, she has repeatedly said that in her dealings with China she will not tolerate the interposition of other Powers, whether co-signatories of the Nine Power Treaty or not.

Leaving aside the foregoing facts which are in themselves decisive as to the impropriety of Japan's position with regard to what she has been pleased to term a "new order" in East Asia, there is the most significant fact that the possibility of what is now happening in China was clearly envisaged by the signers of the Nine

Power Treaty. The very fact that this possibility was envisaged was, indeed, the moving reason for securing the commitments contained in that treaty. By no definition, therefore, of the doctrine or principle of *rebus sic stantibus* can the position of Japan be justified.

Finally, with regard to this matter of *rebus sic stantibus*, it is of interest to note, that, when she has found it to her interest to do so, no nation has more strongly asserted the binding force of treaties and more strenuously repudiated the application to them of the doctrine of *rebus sic stantibus*, than has Japan. In the Washington Conference, when the Chinese asked that the continuing validity of the agreements imposed upon her in 1915 by the infamous Twenty-One Demands be examined, Japan vehemently protested. Also, when, in 1928, the Chinese Government indicated that they gave a construction to Article Twenty-Six of the Treaty of Commerce and Navigation between herself and Japan which would permit China to declare that the Treaty was terminated, Japan declared, in a Note dated July 31, 1928, that "the Treaty can neither be abrogated nor terminated without special mutual consent or agreement between both Contracting Parties," and that, should China persist in acting upon her interpretation of the Treaty, it would be "an outrageous act disregarding good faith between the nations in which the Japanese Government find themselves absolutely unable to acquiesce."⁶

⁶ For text of this Note, see *Chinese Social and Political Science Review*, vol. XII, p. 72 (October, 1928).

The Development of Japan's Demands upon China—Japan's "Three Principles." Referring back to the British communication of January 14, 1939, to the Japanese Government, there is indicated, in the quotation of the communication which has been made⁷ the character of the demands that, by that time, Japan was making upon China. These demands were an outgrowth from, or predicated upon, "Three Principles" which, in January, 1936, Mr. Hirota, then Japanese Minister for Foreign Affairs, had declared to the Japanese Diet at Tokyo, as those upon which Japan was determined to govern her relations with China. These "Three Principles" have since then been often referred to by the Japanese and have received statement in varying forms, but, as originally declared by Mr. Hirota, they were to the following effect:⁸

In the first place, in order that a "basic readjustment of Sino-Japanese relations" might be secured, Japan would "aim to bring about cessation by China of all unfriendly acts and measures and her active collaboration with Japan."

In the second place, this rehabilitation of Sino-Japanese relations would necessarily involve a "regularization" of relations between Manchukuo and China, which, as Mr. Hirota went on to say, would mean that the Chinese Government should recognize Manchukuo as an independent and sovereign State, should open up

⁷ See p. 80.

⁸ For text of this address by Mr. Hirota, see *New York Times*, January 21, 1936.

with her diplomatic relations, and should "harmonize" the interests of the two States.

In the third place, said Mr. Hirota, "suppression of communist activities in our part of the globe and liberation of China from the Red menace is . . . a matter of vital importance not only for China but for the stabilization of East Asia and of the world."

Although not so explicitly stated at this time, Japan soon made it known that, for the suppression of communism in China, the Chinese authorities had not sufficient power, and that, therefore, for an indefinite time, it would be necessary that China should grant to Japan the right to station and operate armed forces in such parts of China, and in such numbers, as Japan might deem necessary for the purpose.⁹

⁹ Dr. Shuhsi Hsi, in his volume, published in 1937, and entitled *The North China Problem*, states the three Hirota principles as follows:

- "(1). China shall abandon the policy of 'pitting one barbarian against another,' and shall not again utilize the influence of Europe and America to embarrass Japan.
- "(2). The relations of China, Japan and the puppet state of Manchukuo shall be satisfactorily maintained. In order to attain this object China must recognize the puppet State. Pending this step China shall respect the latter's *de facto* existence by preventing hostilities from breaking out, and by maintaining close economic relations between the said entity and the North China Provinces.
- "(3). China and Japan shall agree upon an effective method to check communism, especially, along the northern border of China."

Drs. S. R. Chow and P. C. Kuo, in an able memorandum, entitled *China's Relations with Japan Since 1931*, prepared for the 1939 study meeting of the Institute of Pacific Relations, state Mr. Hirota's Three Principles as follows:

- "(1). China must definitely abandon her policy of playing off one foreign nation against another, and must not attempt to check the influence of Japan by cooperation with Europe and America.

Japan Severs Relations with the Nationalist Government of China and Announces Intention to Promote Establishment of a New Government in China. On January 16, 1938, the Japanese Government formally notified the diplomatic representatives of other Powers at Tokyo that, at an imperial meeting, presided over by the Emperor, it had been decided that the Japanese Government would withdraw its recognition of the Nationalist Government of China. Furthermore, the formal announcement went on to say that Japan was looking forward to the establishment of a new Government in China with which she might cooperate. The text of the Japanese statement read (in part):

"the Japanese Government will cease from henceforward to deal with that [Nationalist] Government and they look forward to the establishment and growth of a new régime, harmonious coordination with which can be really counted on. With such a régime they will cooperate fully for the adjustment of Chinese-Japanese relations and for the upbuilding of a rejuvenated China. Needless to state, this involves no change in the policy adopted by the Japanese Government of respecting the

Friendship with Japan should be exclusive of that with European and American Powers.

- "(2). China must show her 'sincerity' toward Japan by a formal recognition of 'Manchukuo,' but as a preliminary step, she must at any rate respect its *de facto* existence.
- "(3). China and Japan must agree upon one effective plan for anti-communist purposes. Inasmuch as the communist movement derives its origin from a 'certain' Power, it is absolutely necessary for China to come to an arrangement with Japan to prevent the spread of communism in China's northern frontier regions.

territorial integrity and sovereignty of China, as well as the rights and interests of other Powers in China."¹⁰

This announcement by the Japanese Government, followed almost immediately with the rupture of diplomatic relations between Japan and China, gave an ominous aspect to what Japan's actions toward China could be expected to be. For, in the light of what had happened with regard to the establishment by Japan of the so-called State of Manchukuo, it could be seen what little substance could be expected to inhere in Japan's assurance that she would respect the territorial integrity and sovereignty of China. Also, in the light of experience, the other nations with interests in China could derive little comfort from the promise that their rights would be respected.

Before this, Japan, in the areas of China which had been brought under her military control, had sought to secure the establishment of various ruling organizations, such as the "Autonomous Government of Northern Shansi," the "Autonomous Government of the Allied Mongols," the "Autonomous Government of Southern Chahar," the "Joint Committee" created in November, 1937, by a union of several of these puppet organizations,¹¹ and the puppet régime in Peiping. In March, 1938, there was also established the so-called "Re-

¹⁰ Taken from the text as published in the *Washington (D. C.) Evening Star*, January 16, 1938.

¹¹ For an elaborate statement of the organizations created and supported by the Japanese in North China see the Memorandum prepared in 1939, by Mr. George Taylor for the International Secretariat of the Institute of Pacific Relations entitled *Japanese Sponsored Régime in North China*.

formed Government" in Nanking. But now it was foreshadowed that the Japanese would turn their energies to the creation of a comprehensive puppet organization which they might recognize and deal with as, to them, the legitimate Government of all China. For a time, Japan appears to have hoped that she might secure Marshall Wu Pei-fu to head this new to-be-established Government, but to this the consent of the Marshall could not be secured. Later Japan obtained the consent of Wang Ching-wei to act as head of the proposed new régime, and came to an agreement with him as to the terms and conditions under which he should assume this office.²²

These terms, so far as they have become authentically known, will presently be discussed, but first must be considered further Japanese declarations tending to reveal the development of Japanese aims in and with regard to China.

Hirota's Four Points of January 23, 1938. On January 23, 1938, Foreign Minister Hirota, in a speech in the Japanese parliament, stated the following four points as the "basic conditions" of a settlement with China:

"(1) China to abandon her communist and anti-Japanese and anti-Manchukuo policies [and] to collaborate with Japan and Manchukuo and their anti-Comintern policy.

²² In the creation of a single puppet organization for all China, Japan has been hindered not only by the necessity of obtaining the consent of some prominent Chinese to act as its head, but by serious conflicts, growing out of rival ambitions, between the heads of her several armies in China.

"(2) The establishment of demilitarized zones in the necessary localities and of a special régime for said localities.

"(3) The conclusion of an economic agreement between Japan, China and Manchukuo.

"(4) China to pay Japan the necessary indemnities."¹³

Mr. Hirota continued: "Our Government now looks forward to the establishment and the growth of the new Chinese régime capable of genuine cooperation with Japan which it is their intention to assist in building up the new and rehabilitated China." Here, it is seen that there is no longer any pretense, as had been the case in the establishment of Manchukuo, that the creation of the new régime was not to be due to Japanese action.

That this new Government was intended ultimately to extend its authority over all China was made plain in a statement issued by Foreign Minister Hirota on May 9, 1938. He said:

"We have no intention to negotiate a peace with the Chiang Kai-shek régime.

"We are looking for a steady development of the new governments at Peiping and Nanking, which, when merged into one administration, will constitute a régime strong enough to take care of all affairs in the territory now under their respective jurisdictions.

¹³ These terms, Mr. Hirota said, had been offered to the Chinese by the German Government acting as intermediary.

"That government, it is anticipated, will, in due course of time, extend its influence to all parts of China, so as to eliminate any influence that the Kuomintang [Nationalist] régime may exert in some remote localities.

"In the meantime, Japan will continue to carry on her military operations against the Chiang Kai-shek régime and its ally, the Communist element, with a view to bringing them into submission."

Premier Konoye's Statement. On November 3, 1938, Prince Konoye, then Premier of Japan, again stated, in broad terms, Japan's purposes with regard to China, and, it will be noted, somewhat modified Japan's previously repeated declaration that her Government would have no dealings with the Nationalist Government of China. The statement read, in part, as follows:

"What Japan seeks is the establishment of a new order that will insure the permanent stability of East Asia. In this lies the ultimate purpose of our present military campaign.

"This new order has for its foundation a tripartite relationship of mutual aid and coordination between Japan, Manchukuo and China in political, economic, cultural and other fields. . . . Even the participation of the Kuomintang Government would not be rejected if, repudiating the policy that has guided it in the past and remoulding its personnel so as to translate its rebirth into fact, it were to come forward to join in the establishment of a new order. . . . Such the Government

declares to be the immutable policy and the determination of Japan."¹⁴

Japan's Reply to the American Note of October 6, 1938. On November 18, 1938, after a delay of some six weeks, the Japanese Foreign Minister, Mr. Arita, made reply to the Note of October 6, 1938, of the American Government, in which that Government had protested in strong and explicit terms the many ways in which the Japanese authorities had been violating the treaty rights of Americans in China. This note of October 6 had contained the following statements:

"The developments of which I have made mention are illustrative of the apparent trend of Japanese policy in China and indicate clearly that the Japanese authorities are seeking to establish in areas which have come under Japanese military occupation general preferences for, and superiority of, Japanese interests, an inevitable effect of which will be to frustrate the practical application of the Open Door and deprive American nationals of equal opportunity."

The American Note also contained the following observation which would seem to have some significance as suggesting to the Japanese that, should their conduct in China not be corrected, retaliatory action might be taken against the rights or interests of Japanese nationals in the United States:

"Your Excellency cannot fail to recognize the exis-

¹⁴ From the text published in the *New York Times*, November 3, 1938.

tence of a great and growing disparity between the treatment accorded American nationals and their trade and enterprise by Japanese authorities in China and Japan and the treatment accorded Japanese nationals and their trade and enterprise by the Government of the United States in areas within its jurisdiction."

Foreign Minister Arita, in his reply of November 18 to this Note, after attempting to explain and justify the various acts complained of in the American Note, went on to say—and this is what gives especial significance to this communication:

"Japan at present is devoting her energy to the establishment of a new order based on genuine international justice throughout East Asia, the attainment of which end is not only an indispensable condition for the very existence of China but also constitutes the very foundation of enduring peace and stability in East Asia. It is the firm conviction of the Japanese Government that in the face of the new situation fast developing in East Asia any attempt to apply to the conditions of today and tomorrow inapplicable ideas and principles of the past would neither contribute toward the establishment of real peace in East Asia nor solve immediate issues."¹⁸

Premier Konoye again States Japan's Aims. On December 22, 1938, Premier Prince Konoye again stated the terms on which Japan would consider peace with China. This declaration needs to be quoted since it added some

¹⁸ For a discussion of the significance of this declaration by Japan, see *ante*, pp. 77 ff.

details of Japan's demands which had not previously been given. In part, the declaration ran:

"The Japanese Government is resolved to carry on military operations for the complete extermination of the anti-Japanese Kuomintang régime and at the same time to proceed with the work of establishing a new order in East Asia. . . . Japan, China and Manchukuo will be united by the common aim of establishing a new order in East Asia. . . . Japan frankly desires China to enter of her own free will into complete diplomatic relations with Manchukuo.

"The existence of Comintern [the Communist International] influence in East Asia cannot be tolerated. Japan, therefore, considers it an essential condition of Sino-Japanese relations that there should be concluded an anti-Comintern agreement between the two countries in consonance with the anti-Comintern agreement between Japan, Germany and Italy.

"In order to insure full accomplishment of this purpose Japan demands, in view of the actual circumstances prevailing in China, that Japanese troops be stationed at specific points during the time the agreement is in force and also that the Inner Mongolian region be designated as a special anti-communist area.

"As regards economic relations between the two countries, Japan does not intend to exercise an economic monopoly in China, nor does she intend to demand that China limit her interests with those third Powers who grasp the meaning of the new East Asia and are willing to act accordingly.

"Japan only seeks to render 'effective cooperation and collaboration between the two countries. That is to say, Japan demands that China, in accordance with the principle of equality between the two countries, should recognize freedom of residence and trade on the part of Japanese subjects in the interior of China with a view to promoting the economic interests of both peoples and that in the light of the historical and economic relations between the two nations China should extend to Japan facilities for the development of China's national resources, especially in the regions of North China and Inner Mongolia.

"The above gives the general lines of what Japan demands. If Japan's true object in conducting the present vast military campaign be fully understood, it will be plain that what she seeks is neither territory nor indemnity for the cost of the military operations. Japan demands only a minimum guarantee for the execution of her function as a participant in the establishment of a new order.

"Japan not only [will] respect China's sovereignty, but is prepared to give positive consideration to questions of the abolition of extraterritoriality and the rendition of foreign concessions and settlements—matters which are necessary for the full independence of China."¹⁰

¹⁰ From the text published in the *New York Times* for December 23, 1938. For an extended comment upon this speech of Prince Konoye and other Japanese statements by General Chiang Kai-shek, see the small volume entitled *Generalissimo Chiang Speaks*, published in 1939 by the Pacific Publishing Company, Hong Kong. This collection of the General's addresses contains a Preface by Dr. C. T. Wang. See also *International Conciliation*, April, 1940.

Articles of Agreement between Wang Ching-wei and Japan. However, the latest, and perhaps the most revealing of Japan's purposes with regard to her future dealings with China, is the draft of the agreement, signed on December 30, 1939, between the Japanese Government and Wang Ching-wei—Wang Ching-wei being the Chinese whom the Japanese Government had selected to head the new puppet government which was to be immediately recognized by Japan as the *de jure* Government of China.

This document, which was made public by the Chinese authorities early in February, 1940, was revealed to them by one Kau Tsung-wu, a leading supporter of Wang Ching-wei. Upon being shown this document, Mr. Kau was, apparently, shocked by its terms, succeeded in obtaining a photostatic copy of it, and carried it to Hong Kong where it was published in a leading Chinese newspaper. The authenticity and correctness of this document, while not formally admitted by the Japanese authorities, has not been denied by them, and that the Chinese are convinced of its authenticity and correctness is shown by the fact that they have circulated it through diplomatic channels.²⁷ The document is so long and involved, it cannot be reproduced *in extenso* or adequately exhibited by extensive quotations, and, therefore, must be summarized.

The document states certain points which are declared to be fundamental for the readjustment of Sino-

²⁷ The text of this document as given out by the Chinese Embassy at Washington appears in *Amerasia*, in its February, 1940, issue.

Japanese relations. These include: (1) that the New Government shall indemnify Japanese nationals who have sustained losses in rights and privileges since the beginning of the "China Incident"—a term employed by Japan when referring to the warfare between China and Japan;¹⁸ (2) that the New Government should confidentially consult Japan with regard to all important matters affecting Japan; (3) that the Chinese Government should recognize existing facts accomplished since the outbreak of the "Incident," and the continuance of the special state of affairs given rise to by force of circumstances; (4) that the term "North China," as employed in the articles of agreement, should designate, in general, the provinces of Hopei, Shansi, Shantung, situated south of the Great Wall (the Wall itself not included) and that part of Honan Province lying north of the old course of the Yellow River; (5) that, in view of the special character of North China as thus defined, as constituting a zone of absolute solidarity between Japan, China and Mongolia—especially as concerns national defense and economic development—a "Political Council of North China" should be established for the purpose of settling locally those matters *vis à vis* Japan and Manchukuo.

There then follows an elaborate statement of the manner in which this Political Council shall be or-

¹⁸ It will be noted that it is possible for Japan to assert that this demand for indemnities does not conflict with the assurance given by Premier Konoye on December 22, 1938, and earlier referred to in this volume. See pp. 96-98. That assurance went no further than to say that Japan would ask for no indemnity "for the cost of military operations."

ganized and operated, and the manner in which it shall adjust relations between North China and Japan and Manchukuo, and the relation it shall bear to the New Central Government of China. As regards the relations of North China with Japan and Manchukuo, it is provided that they shall include, *inter alia*, the problem of according Japan necessary special facilities in developing and utilizing underground resources; the problem of rationalizing supply and demand of raw materials and commodities between Japan, Manchukuo, Mongolia and North China; the participation of Japanese in the regulation of currency and exchange between these countries; Sino-Japanese "cooperation" in matters of aviation, railway transportation, postal and telegraphic services, and ocean transportation along main ocean routes; and the use of Japanese advisers and staff members.

Besides the "Fundamental Points," the articles of agreement between Wang Ching-wei and Japan enumerate certain "Basic Principles" which are to govern the new Sino-Japanese relations. These provide: (1) that common action shall be taken by China with Japan and Manchukuo against communism; (2) that there shall be economic cooperation; (3) that, in order to check the spread of communism, "Mongolia shall be designated as an area where Japanese paramount position both militarily and politically shall especially be established"; (4) that a zone of "strongest Sino-Japanese economic solidarity" shall be established in the lower Yangtze Valley; (5) that Japan's "paramount

position " in certain designated islands along the sea-coast of South China shall be recognized and established.¹⁹

Under a separate heading entitled "Main Items for the Readjustment of the New Sino-Japanese Relations," the document provides: (1) that China should recognize the Empire of Manchukuo; (2) that Japan and Manchukuo should respect the territory and sovereignty of China; (3) that Japan, China and Manchukuo should conduct their diplomacy on a basis of "mutual cooperation" and that, in their relations with third Powers, they should not act contrary to this "basic principle"; (4) that Japan, China and Manchukuo should cooperate to "amalgamate, create and develop their culture"; (5) that Japan should "appoint necessary advisers to the New Central Government to participate in its work of reconstruction; (6) that Japan would give consideration to the restoring to China of concessions and the abolition of extraterritoriality; (7) that Japan and China should jointly execute their anti-communist program—"in order to attain this aim Japan shall station necessary troops at strategic points in North China and Mongolia";

¹⁹ In a later paragraph of the document it is provided that Hainan Island shall be one of these islands, and be given a local administrative organization, including departments for military affairs, and to be directly under the control of the New Central Government. It is further provided that "in view of the paramount position that Japan enjoys in that island" the said political organization shall be empowered to dispose of matters relating to the stationing of Japanese troops, the utilization of specially designated resources indispensable for national defense, and Sino-Japanese cooperation in military affairs and in the maintenance of order.

It is further provided that "Wang Ching-wei shall recognize the fact that Amoy is a special administrative area."

(8) that, outside the areas designated, the Japanese troops should be withdrawn "as rapidly as warranted by circumstances. But all Japanese troops now stationed in North China and the lower Yangtze Valley shall remain until peace and order are firmly established"; (9) that, in order jointly to maintain peace and order, China should concede to Japan the right to station troops and warships at certain specially designated points along the Yangtze Valley and in certain specially designated islands along the sea-coast of China; (10) "that Japan reserves for herself the right to claim and supervise for military purposes those railways, air lines, postal and telegraphic services, important harbors, and water routes in those areas garrisoned by Japanese troops"; (11) that, within these garrisoned areas, China should reduce her police and other armed forces temporarily to the minimum required for internal order and national defense; (12) that Japan should participate, by appointing advisers, training officers and supplying arms and munitions, in China's efforts to organize her army and police; (13) that China and Manchukuo should conclude the necessary agreements with regard to the "development of resources, customs, revenues, trade, aviation, communications, postal and telegraphic services, astronomical and general surveys and so forth"; (14) that "China shall grant Japan special privileges and facilities to develop and utilize resources especially those underground resources in North China and Mongolia. Again, in view of the same economic solidarity, Japan should have necessary facilities for development

and utilization of specially designated resources even in areas outside of North China and Mongolia"; (15) that China should "adopt appropriate tariff rates and customs system to promote commerce in general between Japan, China and Manchukuo"; (16) that China should "facilitate and rationalize" supply and demand of raw materials between China, Japan and Manchukuo especially with reference to North China; (17) that, with reference to the development of China's communications, etc., Japan should lend "the necessary assistance and even active participation"; (18) that Japan and China should cooperate in reconstructing "New Shanghai"; (19) that China should recognize Mongolia as possessed of broad autonomous powers, and as a highly anti-communist area.

Comment upon the Wang Ching-wei Agreement. In this statement of Japan's desires and intentions with regard to China very little is left to the imagination, and, whatever obscurity is created by the generality of some of the terms, that obscurity is dissipated by the results which, in the past, have attended other instances in which China has attempted, or been compelled, to "cooperate" with Japan. It has been generally agreed that, had China, in 1915, been compelled to accede to all the Twenty-One Demands which Japan then presented to her, she would have become a mere political appendage of Japan, and, for all practical purposes, subject to her political control. But it is seen that this Japanese-Wang Ching-wei agreement goes far beyond the

Twenty-One Demands in the explicitness and specificness with which Japanese political, economic, military and even cultural control of China is provided for.

It is also to be observed that little concealment is made that when China is thus brought under Japanese control little opportunity for the operation of that equality of opportunity for foreign trade and enterprise in China, which the doctrine of the Open Door provides for, will remain; for, in a number of specific and important instances it is frankly provided that China shall grant to Japan "special" rights or privileges in matters of trade, development of industry, mining of underground resources, and the disposition of agricultural and other raw products.

Wang Ching-wei Régime Inaugurated: Reactions thereto. On March 30 of the present year (1940) the Japanese puppet government, headed by Wang Ching-wei, was formally established at Nanking, and a statement issued by the Japanese Government offering to it the congratulations of that Government, and extending to it "wholehearted cooperation and support for its development."

The American Government, without delay, that is, on the same day, March 30, issued, through the Secretary of State, the following statement:

"In the light of what has happened in various parts of China since 1931, the setting up of a new régime at Nanking has the appearance of a further step in a program of one country by armed force to impose its will

upon a neighboring country and to block off a large area of the world from normal political and economic relationships with the rest of the world. The developments there appear to be following the pattern of other régimes and systems which have been set up in China under the aegis of an outside power and which in their functioning especially favor the interests of that outside power and deny to nationals of the United States and other third countries enjoyment of long-established rights of equal and fair treatment which are legally and justly theirs.

"The Government of the United States has noted statements of high officials of that outside power that their country intends to respect the political independence and the freedom of the other country and that with the development of affairs in East Asia this intention will be demonstrated. To this Government the circumstances, both military and diplomatic, which have attended the setting up of the new régime at Nanking do not seem consistent with such an intention.

"The attitude of the United States toward use of armed force as an instrument of national policy is well known. Its attitude and position with regard to various aspects of the situation in the Far East have been made clear on numerous occasions. That attitude and position remain unchanged.

"This Government again makes full reservation of this country's rights under international law and existing treaties and agreements.

"Twelve years ago the Government of the United

States recognized, as did other governments, the National Government of the Republic of China. The Government of the United States has ample reason for believing that that Government, with capital now at Chungking, has had and still has the allegiance and support of the great majority of the Chinese people. The Government of the United States of course continues to recognize that Government as the Government of China."

Great Britain has also made known her intention not to recognize the *de jure* character of the Wang Ching-wei régime.

The Chinese Government immediately issued on March 30 a declaration stigmatizing the Wang Ching-wei establishment as "nothing more than a puppet organization created and controlled by the Japanese militarists as an instrument for usurping China's sovereign rights and destroying her independence and territorial and administrative integrity. It will also be used by the Japanese to overthrow international law and order, to nullify the Nine Power Treaty and to eliminate all commerce and interests of third Powers in China." The statement further declared that any act done by the Wang Ching-wei organization or other illegal puppet body would be regarded by China as null and void. The declaration continued: "The Chinese Government is convinced that all self-respecting States will uphold law and justice in the conduct of international relations and will never accord *de jure* or *de facto* recognition to Japan's puppet organization in China. Any manifes-

tation of such recognition in whatever form or manner would be a violation of international law and treaties and would be considered as an act most unfriendly to the Chinese Nation for the consequences of which the recognizing party would have to bear full responsibility." ²⁰

²⁰ From text supplied by the Chinese Embassy at Washington.

CHAPTER FOUR

JAPAN'S MONROE DOCTRINE

Thus far, this volume has dealt with the specific claims or arguments which the Japanese Government has, from time to time, advanced in attempted justification of its dealings with China. The presentation of Japan's Far Eastern contentions will not be complete, however, without an examination of the assertion which has issued from many authoritative Japanese sources, although it has not found explicit statement in a fully authoritative declaration by the Japanese Government, that Japan, as the dominant Power in the Far East, can justly declare and enforce a doctrine which can properly be called a "Monroe Doctrine" of, or for, the Far East. This term is, of course, employed by the Japanese in order to give to the doctrine a factitious support derived from the precedent alleged to be supplied by the American Monroe Doctrine. It, therefore, becomes of the highest importance to determine what, in fact, is the true character of this doctrine, as advanced by Japanese writers and public men, and thus be in a position to determine in how far it bears a resemblance to the American Monroe Doctrine.

As has been said, this so-called Monroe Doctrine for the Far East has not, as yet, been declared in express and implicit terms by the Japanese Government. This

statement, however, may possibly require qualifications to at least this extent: the assertion by Japan that a "New Order" is developing in East Asia—not simply in China—which will render inapplicable treaties and other policies which, up to now, have governed the actions of the Powers in the Far East,—has implications broad enough to include the Japanese Monroe Doctrine which is now to be examined. Indeed, the term "New Order" as yet undefined by Japan, is, of course, elastic enough to embrace anything that Japan may desire to include under it.

Further, it may be observed that Japan's repeated declaration that upon her lies the obligation, and therefore the right, to create and maintain a "just peace" in the Far East, is a claim broad enough to cover the so-called Monroe Doctrine which is about to be discussed, since Japan has made it plain that to her belongs the right to determine what conditions must be brought into existence, before it can be said that a "just peace" has been secured.

*Japan's Doctrine.*¹ There is no doubt that Japan can properly assert that her own national interests, political as well as economic, are more closely bound up with China than are the similar interests of other countries. Ambassador Shidehara was, therefore, justified in saying in his address to the Japanese Society of New York on March 3rd, 1920, that "It should be borne in mind

¹The pages which immediately follow are taken from the author's *The Sino-Japanese Controversy and the League of Nations*.

that Japan has in China a special position which is not shared by the United States or by any of the European powers. Her destiny is closely interwoven with that of China, and her own national safety and vital interests are in many cases directly involved in Chinese problems, which America and Europe can afford to approach from purely sentimental or economic points of view. I feel sure, however, that this special position of Japan is fully realized by her American and European friends, and that she will not be called upon to renounce her undoubted right of self-protection and self-preservation."

It will be noted that there is here asserted nothing more than the fact that, because of actual geographical situation and economic needs, Japan is vitally concerned with economic and political conditions in China. This no one can deny, and the only question is as to what rights, as tested by accepted principles of international law and comity, Japan may properly claim as deducible from these premises.

Japan finds herself in the following situation. Viewed politically, she is of course concerned that a powerful Western nation should not obtain a control in Eastern Asia, that is, in China, such as might, under certain circumstances, constitute a military or naval menace to herself. Viewed economically, the situation is this. The population of her homeland has already reached a considerable degree of density, and is still increasing. Just how rapid this increase is does not certainly appear from the authentic figures that are avail-

able, but in recent years it has been not far from one million annually. The amount of additional land that it is practicable for Japan to bring under cultivation is not great, although it is probable that, if more scientific modes of irrigation were introduced, the food-producing capacity of the homelands could be somewhat increased. Also, if the Japanese could be trained or persuaded to rely less exclusively upon rice, their food problem would be rendered less perplexing to them. However, do what they can, the Japanese are confronted with an increasingly serious situation, unless their growth in numbers can be checked.

It now seems fairly clear that the Japanese themselves recognize that they cannot hope to solve their population problem by means of emigration. There is no reasonable hope that they will be received in any considerable numbers by those countries, like the United States, Canada, New Zealand and Australia, where they can successfully compete economically with the native populations. It is equally clear that the Japanese are not able to compete upon anything like equal terms with the natives of Asia or Polynesia. Even in Korea, despite the encouragement given them by colonization societies and the favoring aid of their own Government, they have had little success as settlers upon the soil. It is evident, therefore, that future increases in the Japanese population must be taken care of in Japan itself. This of course means that Japan must continue that process of industrialization and commercialization of her economic life which has already made such con-

siderable progress. This in turn means that she must be able to import foodstuffs and raw materials in increasing quantities, for, unfortunately for her, she has within her own borders small supplies of coal, oil and minerals.

It is this situation which has led Japanese statesmen of recent years to lay such emphasis upon what they have termed Japan's "economic right to existence," and to refer to Manchuria as her "life line." This doctrine appeared with significant emphasis in the correspondence leading up to the establishment, in 1920, of the new International Banking Consortium, as well as in certain of the declarations made by the Japanese Delegation in the Washington Conference. It also found statement in a remarkable paper prepared by the late Premier of Japan, Tokashi Hara, only a few weeks before his most lamentable assassination. The importance of these declarations or statements of right justify a review and critical examination of them.³

Premier Hara said that if one starts with the proposition that no nation has a right to compel another nation to commit suicide, "it follows that it is the great duty of every government today to open wide its economic doors, and to extend to all peoples free access to what is vital to existence, and thus to save the more unfortunate from unnatural misery and discrimination. . . . The 'open door' and the abolition of world barriers must be our policy, as it is the first principle of a lasting

³ Mr. Hara's paper entitled "Reflections on Lasting Peace" was published in the *Tokyo Diplomatic Review* of September 14, 1921; and republished in English translation in *The Living Age* of January 7, 1922.

peace. We Japanese in particular," he went on to say, "are suffering from the increasing difficulty of living, attributable to our ever waxing population and our ever waning resources. Were any people to reach a point where their entire energy was inevitably devoted to earning a bare subsistence, and no energy was left them for attaining higher spiritual and cultural ideals, that people would indeed be facing a mighty dark future. We tremble to think that our people are often threatened with uncertainty as to even the necessities of life. Their condition ought to be remedied and greater freedom given the Japanese, if the world expects her to be the keystone to the arch of peace of the Far East, and a faithful supporter of the welfare of the world. Thus, even a single example shows beyond a doubt the absolute dependence of lasting peace upon the 'open door.' By 'open door' I do not mean a complete throwing down of national boundary stones. What I have in mind is the removal of the economic insecurity of some peoples by extending to them the opportunity for free access to the world's resources, eliminating of artificial economic barriers, and adjusting as much as possible the inequality arising from the earlier discriminations of nature and history."

Here we have frankly applied to Nations that same principle with regard to the distribution of so-called "gifts of nature" which certain economists or sociologists have sought to have adopted as between individual human beings. Its international adoption would of course mean the abrogation of all tariff barriers, of all

restraints upon immigration and emigration, and the repeal of all laws imposing limitations upon aliens with regard to land-holding, to ownership and operation of mines or ships, or to any other economic activities or enterprises.

Here is not the place to discuss the abstract or inherent justice of this communistic principle whether as applied to nations or to individuals. It is sufficient to say that the chance that it will be adopted by the nations of the world is so remote as to take it out of realm of practical politics. If, then, this be admitted, in what position is Japan left? Premier Hara implied that, unless Japan were allowed to share in the resources of other nations—and he evidently had China especially in mind—Japan could not be counted upon to aid in the maintenance of peace. From his statements the conclusion seems to follow that a refusal upon the part of China to make her natural assets sufficiently available to Japan would be equivalent to a demand upon China's part that Japan should commit national suicide, or at least that she should acquiesce in a life for her people that would be one of only bare existence.

An examination of the correspondence leading to the establishment of the International Banking Consortium, will show that neither the British nor the American Government conceded any right upon the part of Japan, in the exercise of its general right of self-preservation, to take any action within Manchuria or Mongolia that would be in derogation of the sovereign territorial rights of China, or that might be founded upon a gen

eral superiority of rights (to use a phrase later employed by Secretary Hughes) within any designated region of China. All that the British and American Governments did engage to do was to refuse their countenance to any enterprises directed against the economic existence or defense of Japan. Of course, aside from any express engagement, it is, under any circumstances, an unfriendly act for one nation to give its support to undertakings directed against the existence of another State. Thus the matter stood when the Washington Conference convened.

It is clear enough that, in that Conference, the Japanese Government made statements and signed agreements which, if carried out in good faith, would prevent it from again raising a claim to special rights or interests in China that would be in derogation of the rights or interests of other Powers, or which would in any wise be inconsistent with the sovereignty and territorial and administrative integrity of China. Japan thus became precluded not only by the general principles of international law and comity but by her own formally given undertakings, from taking such action.

As regards the matter of her national economic existence, and, as connected therewith, the obtaining of an adequate supply of foodstuffs and raw materials for her people, Japan, at the second meeting of the Committee on Pacific and Far Eastern Questions of the Washington Conference made the following statement:

"We adhere without condition or reservation to the principle of the Open Door or equal opportunity in

China. We look to China in particular for the supply of raw materials essential to our industrial life, and for foodstuffs as well. In the purchase of such materials from China, as well as in all our trade relations with that country, we do not claim any special rights or privileges, and we welcome fair and honest competition with all nations."

This was a satisfactory declaration, but it was probably somewhat disturbing to China, and possibly to the other Powers, later to hear the Japanese Delegation say that Japan justified her refusal to surrender the leased Kwantung area because that area was a part of Manchuria "where, by reason of its close propinquity to Japan's territory more than anything else, she has vital interests in that which relates to her economic life and national safety."

With regard to Japan's claim to rights of trade or of economic exploitation based upon her economic necessities, there are two countervailing arguments that China or any other Power concerned may adduce.

In the first place it may be said that the misfortunes or needs of one State give to it no ethical or moral right to violate the rights of another State, any more than they justify, in private law, the seizure by one individual of another individual's property.

In the second place, it can of course be shown that this is not Japan's only alternative. As other industrialized countries have done, she can dispose in the open market of her manufactured products, and, in turn, purchase, in free competition with the other peoples, the

foodstuffs and raw materials which her subjects may need, and this process will be limited only by the ability of the Japanese to develop an efficient economic and industrial machinery and an adequately trained body of workers.

In truth, if the processes which have operated in other parts of the world operate also in Japan, as we may expect they will, it will be found that her population will accommodate itself in the matter of numbers to the standards of living that prevail in Japan. That is to say, the standards of economic comfort being given, the population by a process of natural increase or decrease will be determined by the available supply of economic goods. Japan, therefore, need not necessarily look forward to a time pictured by Premier Hara, when her people are obliged to devote themselves exclusively to maintaining a bare existence without opportunities for culture and the enjoyment of what are termed luxuries of life. If her people become educated to a higher standard of life, the birth rate will decrease until these standards become maintainable. This may mean that Japan cannot look forward to as large population as her political ambitions may seem to make desirable, but this can not be employed as an argument in defense of an offensive foreign policy.

What special rights, then, if any, may Japan be said to have to exploit the natural resources of China or of Eastern Asia generally? She has none that will prejudice the interests, political or economical, of the Chinese, for, however great its national needs, one country

cannot be conceded to have the right to sacrifice to them the welfare of another unwilling people. The negative of this doctrine was declared by President Wilson in his Mt. Vernon Address of July 4, 1918, when he declared the moral obligation to apply the following principle:

"The settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship, upon the basis of the free acceptance of that settlement by the people immediately concerned, and not upon the basis of the material interests or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery."

Japan herself, as one of the Allies, accepted this proposition when it agreed that the four principles of this address and the fourteen points of President Wilson's Address to Congress on January 8, 1918, should be accepted as stating fundamental principles upon which a just and lasting establishment of international peace was to be founded.

Japan has the undoubted ethical right to demand that she should have an equal right with the other Powers to purchase and import raw materials wherever obtainable, but, however great her own needs, she cannot claim, in these respects, a preference over other Powers, much less a right to extend her political influence or control in order that she may have an assured access to the raw materials of another country, against the wishes of the people of that country, and to the prejudice of the equal

rights of other nations. In the reply which the Allies made to Germany's protest against the conditions of peace submitted to her, occurs the following declaration which is equally applicable to any claim that the Japanese may make that it is necessary, upon economic grounds, that she should seek to increase her political control over China:

"It would appear to be a fundamental fallacy that the political control of a country is essential in order to procure a reasonable share of its products. Such a proposal finds no foundation in economic law or in history. . . . A country can continue to be a great manufacturing country without producing the raw materials of its main industries. Such is the case, for instance, with Great Britain which imports at least one-half of her food supplies and the great preponderance of her raw material from abroad."

The foregoing observations have been based upon Japan's economic needs. It is to be noted, however, that, as was pointed out in the Lytton Report, when Japan speaks of Manchuria as her "life line," she has also military or strategic considerations in mind.

The Monroe Doctrine of the United States. In President Monroe's famous declaration of 1823 it was said with reference to Russian expansion in the northwest of the American continent: "the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any Euro-

pean Powers." And, with reference to threatened European intervention in America, in the same message to Congress—which was intended also as a notice to the world—it was said:

"We owe it, therefore, to candor, and to the amicable relations existing between the United States and those Powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European Power we have not interfered and shall not interfere. But with the governments who have declared their independence, and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny, by any European Power, in any other light than as the manifestation of an unfriendly disposition towards the United States."

The doctrine, thus declared, has since been somewhat widened.

By President Polk, in 1845, it was declared that "it should be distinctly announced to the world as our settled policy that no future European colony or dominion shall, with our consent be planted or established on any part of the North American continent." Here only the North American continent was referred to, but the employment of the word "dominion" indicated that no increase of European possessions upon that continent,

whether by colonization or annexation, whether by conquest or by voluntary transfer or purchase, would be tolerated. And, in later pronouncements, the South American continent was brought within the scope of this broadened doctrine.

Secretary of State Bayard, resisting the enforcement against Haiti of what was called the Pelletier Claim, said:

"The United States has proclaimed herself the protector of this western world, in which she is by far the stronger Power, from the intrusion of European sovereignties. . . . She has announced that she would cherish as becomes her the territorial rights of the feeblest of those States, regarding them not merely as in the eye of the law equal to even the greatest of nationalities, but in view of her distinctive policy as entitled to be regarded by her as the objects of a peculiarly gracious care."

In 1895 the United States took the position that it would not permit Great Britain to determine arbitrarily the boundary line between her possessions in South America and the State of Venezuela. The American Secretary of State, Richard Olney, declared that, under the Monroe Doctrine, the United States did not assert a protectorate over the other American States, and that, by that doctrine those States were not relieved from obligations attaching to them by international law, nor were the European States prevented from enforcing such obligations or punishing a breach of them.

More explicitly defining the rights claimed by the United States, under the Monroe Doctrine, Secretary Olney said:

"It does not contemplate any interference in the internal affairs of any American State or in the relations between it and other American States. It does not justify any attempt on our part to change the established form of government of any American State or to prevent the people of such State from altering that form according to their own will and pleasure. The rule in question has but a single purpose and object. It is that no European Power or combination of European Powers shall forcibly deprive an American State of the right and power of self-government and of shaping for itself its own political fortunes and destinies."

"Is it true, then (Secretary Olney continued), that the safety and welfare of the United States are so concerned with the maintenance of the independence of every American State as against any European Power as to justify and require the interposition of the United States whenever that independence is endangered? The question can be candidly answered in but one way. The States of America, South, as well as North, by geographical proximity, by natural sympathy, by similarity of governmental constitutions, are friends and allies, commercially and politically, of the United States. To allow the subjugation of any of them by any European Power is, of course, to completely reverse the situation, and signifies the loss of all the advantages incident to their natural relations to us. But that is not all. The

people of the United States have a vital interest in the cause of popular self-government. . . . They believe it to be for the healing of all nations, and that civilization must either advance or retrograde according as its supremacy is extended or curtailed. Imbued with these sentiments, the people of the United States might not impossibly be wrought up to an active propaganda in favor of a cause so highly valued both for themselves and for mankind. But the age of Crusades has passed, and they are content with such assertion and defense of the right of popular self-government as their own security and welfare demand. It is in that view, more than in any other, that they believe it not to be tolerated that the political control of an American State shall be forcibly assumed by an European Power."

And then, by way of emphasizing the ability of the United States to enforce its own policies with reference to the American continents, but not for the purpose of giving any further definition to the Monroe Doctrine, Secretary Olney declared:

"Today the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interpretation. Why? It is not because of pure friendship or goodwill felt for it. It is not simply by reason of its high character as a civilized State, nor because wisdom and justice and equity are the invariable characteristics of the dealings of the United States. It is because, in addition to all other grounds, its infinite resources combined with its iso-

lated position render it master of the situation and practically invulnerable as against any or all other Powers."

President Roosevelt, in his annual message to Congress in December, 1901, said: "We do not guarantee any [American] State against punishment if it misconducts itself provided that punishment does not take the form of acquisition of territory by any non-American power." Hence, with reference to the attempt of Germany, Italy and Great Britain to collect claims against Venezuela by blockading her ports and taking possession of her customs houses, those Governments found it desirable to say: "We declare especially that under no circumstances do we consider in our proceedings the acquisition or the permanent occupation of Venezuelan territory."

President Roosevelt, however, saw the complications that might arise, and even the injustice that might be done to non-American States, if they were not to be permitted to use what might be the only possible effective means for collecting debts owed to them or to their nationals by American States. He therefore added what is sometimes spoken of as the "Roosevelt Corollary" to the Monroe Doctrine, namely, that, in cases of disputes between non-American and American States with reference to the payment of debts by the latter to the former, the American Government should itself take possession of the revenue services on the American States if that course should be necessary in order to satisfy the just claims of their creditors. To this extent, then, the Mon-

roe Doctrine was used as a warrant upon the part of the United States to intervene in the affairs and assume control of the governmental policies of the other American States.

It is not to be wondered at that those American States were not pleased with this development of the Monroe Doctrine. But President Roosevelt took frequent occasions to assure them that they need have no fear of aggression upon the part of the United States—that its intervention would never extend beyond what would be required in order that just claims upon the part of other States might be satisfied. He however warned them that if they desired to escape from such intervention they should strictly fulfill all the obligations which international law and equity imposed upon them.

That, upon several occasions, the United States has found itself compelled, in the exercise of its "police powers" over the American continents, to intervene in, and even for a time to assume full administrative control over various of the Central American and West Indian States, is well known.*

In 1912, as a result of a report circulated that the Japanese, through a concession from Mexico to a Japanese company, were seeking to obtain a station upon Magdalena Bay, in Lower California, the American Senate passed the following resolution:

* See especially the financial receivership established by the United States in 1905 over Santo Domingo, and President Roosevelt's message of February 7, 1905, to the Senate. Also his annual message of December, 1905.

"Resolved, That when any harbor or other place in the American continents is so situated that the occupation thereof for naval or military purposes might threaten the communications or the safety of the United States, the Government of the United States could not see without grave concern the possession of such harbor or other place by any corporation or association which has such a relation to another Government, not American, as to give that Government political power or control for national purposes."

The foregoing account of the American Monroe Doctrine exhibits it in its traditional character as a declared policy of the United States. However, within the last few years, while not changing its substantial content as applicable to policies of the United States bearing upon intervention of non-American countries upon the American continents, the Doctrine, as regards relations between the United States and the Nations of Central and South America, has assumed a distinctly new character. The change consists in the fact that the Doctrine is no longer viewed by the United States as one unilaterally asserted by itself, and, therefore, one with regard to the interpretation and application of which the United States reserves to itself the sole and final decision, but as a Doctrine commonly held by all the American States and commonly to be interpreted and supported by them.

The purposes of the present volume do not require that the manner in which, and the steps by which, this transformation of the American Monroe Doctrine was

brought about be described. It is sufficient here to say that this change has been the outcome of the recent "good neighbor" policy of the United States, and of the work of Pan-American Conferences since 1933.⁴

The Two Doctrines Contrasted. From the foregoing review it is seen that, so far as the American Monroe Doctrine is concerned, Japan can find no precedent for interfering with the domestic affairs of China or Eastern Asia generally, or of objecting to the policies or actions of the Western Powers in the Far East except in so far as she finds her own national safety affected. It gives her no ground for claiming special or preferential commercial or industrial interests in China or elsewhere, and still less does it furnish justification to her for asserting political rights or influence in Asia. Least of all, does it warrant her, even for purposes of urgent national protection, in forcibly annexing or otherwise gaining administrative and political control over territory belonging to another sovereign Power. It has now been more than a hundred years since the United States declared its Monroe Doctrine, but, despite the many times in which it has been resorted to, the United States has never sought its support as a justification for acquiring additional territory, or for asking that it be given

⁴ Closely connected with this development of a Pan-American doctrine has been the evolution of American doctrines, or policies, with reference to the right of one State to land troops upon the territory of another sovereign State, or in other ways to attempt to control by force, or threat of force, the domestic policies of that State. This last phase of the subject is briefly discussed by the author in his *Sino-Japanese Controversy and the League of Nations*. See p. 581 ff.

special commercial or other economic privileges in the other American States. And in those instances in which it has found itself compelled to assume administrative control of the financial or other governmental agencies of Central American or West Indian States, it has sedulously avoided acts that would especially benefit its own nationals as compared with those of the other Powers. In fine, it has exercised its powers of military intervention or of financial administration for the benefit of the peoples of the countries concerned or of those who have had just pecuniary claims against them.

Under the doctrines of national safety and national interests which are recognized by international law, as well as by way of analogy with the American Monroe Doctrine, Japan was within her right when she objected to the increase of Russian political influence in and over Korea. That influence having been expelled as a result of the Russo-Japanese War, Japan would have been equally within her right, had she insisted that Korea should not by her policies allow any other nation to obtain dominant influence in her peninsula, or by her acts furnish justification to other Powers to intervene and assume permanent control of her government. But Japan was not within her right, either under generally accepted doctrines of international morals, or under any Monroe Doctrine of her own, in proceeding to the annexation of Korea and incorporation of that considerable kingdom into her own dominions.

In analogy with the American doctrine, Japan would be justified in objecting to the increase in China or

elsewhere in Eastern Asia or in the Pacific of the political influence of other nations whose presence at her doors or in her neighborhood might be dangerous to herself. It is conceivable that, upon these grounds, she might have objected to the annexation of the Philippine Islands by the United States. She did, indeed, protest against the annexation of the Hawaiian Islands by the United States, alleging that there had been an augmentation of Japan's interests in the Pacific, that the maintenance of the *status quo* in Hawaii was essential to the good understanding of the Powers having interests in the Pacific, and that it was feared that the absorption of the islands by the United States would tend to endanger rights of Japanese subjects residing in them and the settlement of claims existing in favor of the Japanese Government under treaty stipulations. Having been assured by the American Government that vested rights would not be endangered by annexation, and that the American Government could see no reason why, because of the augmentation of Japan's interests in the Pacific, a policy which for years had tended towards annexation should be abandoned on the eve of its realization, the Japanese Government withdrew its protest.

Under the American Monroe Doctrine, as well as according to accepted principles of international law, a nation is justified in objecting to the establishment in its neighborhood of foreign political influences that will endanger its own national safety, but no nation has an ethical or international juristic right to prevent another

nation from developing its economic or political or even its military power, or to protest against its doing so upon the ground that the nation in question may become so strong as ultimately to be a danger to itself."

The differentiation of the American Monroe Doctrine from that of Japan, which became most evident in the declaration, in April, 1934, of the Official Spokesman of her Foreign Office, may be further shown by quoting the following from Professor Blakeslee's article entitled "The Japanese Monroe Doctrine."⁵⁴

"Although there are certain similarities between the respective position, policies and action of the United States and Japan there are also decided differences. The position of Japan in Asia in certain important respects fails to parallel that of the United States in America. The United States is a vast territory with a great population *vis-à-vis* a dozen Caribbean republics, each with a relatively small area and population. Japan, on the other hand, is a country with a relatively small area and population *vis-à-vis* the vast territory and great population of China. An attitude which therefore appears natural for the United States to take toward the Caribbean states does not appear natural for Japan to take toward China.

"As to the principles contained in the Japanese Monroe Doctrine, some of the most important of them have

⁵⁴ When the building of particular fortifications or other military establishments can have no other reason than an offensive one against another State, that State may be justified in protesting.

⁵⁵ *Foreign Affairs*, July, 1933.

no counterpart in the American policy. The doctrine of the right to live, the life line, and economic expansion are exclusively Japanese. The United States does not need to use military force to induce the Caribbean republics to permit American capital to find profitable investment. The doors are voluntarily wide open. It does not possess or seek an exclusive economic concession in any Latin American republic; it has never asked that the railroads, the foreign capital, or the mineral resources should be reserved for American citizens. Nor has it demanded that any Latin American country should open its natural resources against its will. Nor do there appear frequent statements in the American press that the status quo in the Caribbean should be changed to the economic and political advantage of the United States.

"The outstanding instances of American military action in the Caribbean, whatever points of similarity they may have to those of Japan in Manchuria, certainly differ from them in important respects. Even in regard to Panama, where the early recognition by the American Government has been severely criticized both at home and abroad, there were important differences: the United States at least violated no international treaties, and acted in accordance with the desire of the local population. In Cuba the vital fact is that the United States, after driving out the Spanish Government at the cost of a war, and then organizing a new administration, turned the island over to the Cubans and withdrew. If the Japanese should follow the same course in Man-

churia—if after establishing a new government they should restore the political and economic control of the country to its people, and then withdraw under terms and conditions similar to those under which the United States withdrew from Cuba—world opinion would be much more favorable to Japan. In Mexico, after the United States had felt it necessary to effect a military occupation of Vera Cruz in 1914, it accepted the proffered mediation of Argentina, Brazil and Chile, and, as a consequence, withdrew its troops. The following year, when conditions in Mexico were anarchic, the American Government convened a conference of six Latin American states and agreed with them upon joint action. Later, when the Mexican Government entered upon a definite course of legislation—aimed at Americans—to restrict foreign economic opportunities in Mexico, the United States Government accepted the legislation, provided only that it should not be retroactive or confiscatory.

“In contrasting the American Caribbean policy and the Japanese Monroe Doctrine, it is particularly important to consider the essential purposes of the two. On examination they appear fundamentally different. Although not every action taken by the United States in the Caribbean can be completely justified, its policy, nevertheless, particularly in recent years, is clear. In addition to the usual duty to protect American life and property, it aims to help the backward Caribbean countries to establish and maintain conditions of stability and prosperity. The United States does not wish

to seize territory, directly or indirectly, or to assume political or economic control. And when it has seemed necessary to intervene in some revolution-tossed land, it has effected the necessary reorganization and has then withdrawn. This has been its history, frequently repeated, in Mexico, Cuba, Nicaragua, Haiti and the Dominican Republic. The policy of the United States is to maintain the status quo in the Caribbean. The Japanese Monroe Doctrine, if it may be judged by the action of the Japanese Government and the statements of many Japanese leaders, has aimed to overthrow the status quo in Manchuria to Japan's own advantage. As for the present Manchurian situation there is no parallel in the Caribbean. To make one, it would be necessary to imagine that the total population of the ten Latin American republics in this region (not including Colombia and Venezuela) was all in northern Mexico. If the United States should make an unjustified military occupation of this imaginary northern Mexico containing 30,000,000 people, overthrow the administration, organize a movement for independence, set up a new government, control it by several hundred American officials and advisers, maintain it by an American army, extend its territory by a military campaign, and take over its railroads and public utilities—then the United States would be doing in the Caribbean essentially what Japan has done in Manchuria, a course of action which many Japanese justify on the basis of their Monroe Doctrine.

“Finally, is there any justification whatever for a

Japanese Monroe Doctrine? The answer depends upon the definition of that Doctrine. To certain interpretations of it American statesmen have given definite approval. It was President Theodore Roosevelt who suggested to Viscount Kaneko in 1905 that Japan should establish a Japanese Monroe Doctrine for Asia; but he clearly had in mind merely the protection of the Orient from European encroachments. Secretary Bryan in 1915 officially recognized that 'territorial contiguity creates special relations between Japan and these territories' (South Manchuria and Eastern Inner Mongolia); and Secretary Lansing in 1917 recognized that 'Japan has special interests in China, particularly in the part to which her possessions are contiguous.' Ambassador Castle in 1930 said that 'Japan must be and will be the guardian of peace in the Pacific.' These and other similar recognitions of certain principles contained in the Japanese Monroe Doctrine were all postulated upon the assumption that the Doctrine would not be used for aggressive purposes.

"For many of the claims which the Japanese are making upon the basis of their Monroe Doctrine there appears to be no adequate justification. They are not entitled to exercise paramount interest in China, or guardianship, or leadership to such a degree as to interfere with the free initiative of other Powers. In some respects, to be sure, Japan has a great superiority over China; but in some other respects she is inferior, particularly in potentialities. Should China, with her vast territory, her great population, and her able people,

develop a stable and reasonably strong government, then the Japanese Monroe Doctrine would at once disappear; for China has the making of a world Power greater than Japan.

"There are other Powers also which have close and important relations with China, long antedating those of Japan. They cannot be expected to surrender these and merely follow Japan's leadership. Russia has long been deeply interested in its neighbor to the southeast. Great Britain has far greater investments in China proper than has Japan. The United States also regards itself, in the words of Secretary Stimson, 'as one of the leading powers in the Pacific Ocean,' and 'has rested its policy upon an abiding faith in the future of the people of China.' America's long and cordial friendship for China, and her great educational and social services to the country, have given it an important position in the discussion of Chinese problems. In view of the historical position of these Powers, there is no justification for a demand that Japan alone should be recognized as the guardian of China." *

England's "Monroe Doctrine." Of the same general character as the Monroe Doctrine of the United States is the declaration that Great Britain has made as to her special concern with regard to certain regions. Before signing the Paris Pact, the British Secretary of State for Foreign Affairs, Sir Austen Chamberlain, informed the American Government that—

* The author is indebted to Professor Blakeslee for his kind permission to make this extended quotation from his able article.

"The language of Article I, as to the renunciation of war as an instrument of national policy, renders it desirable that I should remind Your Excellency that there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self-defence. It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect. The Government of the United States have comparable interests the disregard of which by a foreign power they have declared they would regard as an unfriendly act. His Majesty's Government believe that in defining their position they are expressing the intention and meaning of the United States Government."

The reminder contained in the foregoing declaration had especial reference to a circular letter which the British Government had issued on May 15th, 1922, at the time that it had declared that Egypt was an independent State. This letter contained the following paragraph:

"The welfare and integrity of Egypt are necessary to the peace and safety of the British Empire, which will therefore always maintain as an essential British interest the special relations between herself and Egypt long

recognized by other Governments. These special relations are defined in the declarations recognizing Egypt as an independent sovereign State. His Majesty's Government have laid them down as matters in which the rights and interests of the British Empire are vitally involved, and will not admit them to be questioned or discussed by any other Power. In pursuance of this principle they will regard as an unfriendly act any attempt at interference in the affairs of Egypt by another Power, and they will consider any aggression against the territory of Egypt as an act to be repelled with all the means at their command." ¹

The observations made with regard to the American Monroe Doctrine and as to its force under international law and the rights to intervention included therein, apply *mutatis mutandis* to the British doctrine. The

¹ The British Declaration of February 28th, 1922, recognizing the sovereignty and independence of Egypt, contained the following paragraphs.

"Whereas the relations between His Majesty's Government and Egypt are of vital interest to the British Empire, the following principles are hereby declared:

"The following matters are absolutely reserved to the discretion of His Majesty's Government until such time as it may be possible by free discussion and friendly accommodation on both sides to conclude agreements in regard thereto between His Majesty's Government and the Government of Egypt:

"(a) The security of the communications of the British Empire in Egypt;

"(b) The defence of Egypt against all foreign aggression or interference, direct or indirect;

"(c) The protection of foreign interests in Egypt and the protection of minorities;

"(d) The Sudan.

"Pending the conclusion of such agreements the status quo in all these matters shall remain intact."

propriety of both doctrines would seem to be recognized by the Covenant of the League—the one expressly, and the other by implication. Article XXI of the Covenant reads:

“Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace.”⁸

⁸ Sir John Fischer Williams in his *Some Aspects of the Covenant of the League of Nations* (pp. 62-63) calls attention to the differences between the French and English texts of this Article, and, with regard to such differences says:

“The English version is thus directed rather to the maintenance of the Monroe Doctrine as against the Covenant; the French seems to be directed rather to protecting the Covenant against the argument that it is or may be in some way invalidated by a possible conflict with the Monroe Doctrine.”

CHAPTER FIVE

THE POSSIBLE IMPERIALISTIC AMBITIONS OF JAPAN: HER PAN-ASIAN POLICY

In order to make complete the statement of Japan's ambitions in the Far East it is necessary that some consideration should be given to views expressed by certain Japanese writers which extend Japan's policy beyond the subjection of all China to her control, and cause it to include not only a domination of all of Eastern Asia but also the Pacific islands along the coast of, and south of, Eastern Asia, that is, including Australia and New Zealand, the Philippines, the Dutch East Indies and other insular possessions of the Western Powers. East Asia, as thus used, would include, besides China, Eastern Siberia, French Indo-China, Siam, Tibet, and the Malay Peninsula. Even Burma and British India would not be unaffected. In part, this comprehensive territorial ambition is subsumed under a doctrine of Pan-Asianism,—of Asia for the Asiatics—which is not stated so as to mean an outright subjection of all these countries to the political sovereignty of Japan, but, nevertheless, as indicating that, when all Western political rights and interests, and, so far as possible, Western cultural influences, have been expelled from Eastern Asia, Japan, will, in fact be the all-dominant Power.¹

¹ It is possible to cite statements by Japanese writers to the effect that, ultimately, Japan will dominate the world. However, the author has not

There is no doubt that the Japanese have employed and emphasized the Pan-Asian—Asia for the Asiatics—element in their imperialistic policies in order that thus they may gain support from the other peoples in East Asia. However, it is equally without doubt that there is a considerable sincerity in this appeal.

In the first place, it is certain that there is a practically unanimous desire on the part of the Japanese—moderates and extremists alike—that Western commercial and political rights and interests should, so far as possible, be expelled from the Far East. This has been shown in almost their every act, and has been iterated and reiterated by their writers and public men.

In the second place, it appears to be the fact that, notwithstanding the extent to which the Japanese have borrowed ideas and methods—especially industrial and military methods—from the West, they are now convinced that, in essential and fundamental matters, Oriental thought and culture is superior to Occidental civilization, and that, among Oriental systems of life, theirs is the best. They admit that, in early times, they borrowed their culture from China, and, in modern times, have profited much from the science of the West, but, they assert, they have borrowed with discretion so as not to disturb the foundations of their own culture, and have so skillfully and intelligently fused what they have borrowed with their own indigenous ideals as to obtain a product superior in excellence to the culture

deemed it worthwhile to direct any special attention to a view as extreme as this. But see chapter on the "Tanaka Memorial."

of any other nation of the world. And, as placing the seal of certainty upon this conviction, is their belief that, above all peoples of the world, they enjoy divine benediction and favor. Fortified with these convictions, it is understandable that they should, with sincerity, advocate a Pan-Asia movement and conceive of themselves as vested with a mission to lead that movement, and, when its end is attained, stand preëminent among all the nations of the East.

A few quotations will serve to show the form of, and alleged foundation for, the Pan-Asia doctrine to which Japanese writers are accustomed to appeal.

Major-General Doihara, often referred to as the "Lawrence" of Asia, has stated the doctrine in the following words:

"The thing North China must do is to create the sort of civilization Nippon has created for herself. . . . It consists of the blending of the Eastern and Western civilization into one which is entirely Asiatic and peculiarly suitable to the people of Asia. All China must eventually accept this viewpoint, and the movement would be fostered throughout Asia and eventually might be expected to spread to Indo-China, India and elsewhere."²

In 1933, we find General Sadao Araki declaring:

"The various countries now in East Asia are objects of the white race's oppression. The already awakened

² Quoted by Hessel Tiltman in his *The Far East Comes Nearer*, p. 24.

Japanese Empire can no longer allow them to tyrannize any more. . . . The Japanese race must all once more truly understand their divine mission. . . . The Japanese people must have the spirit and power to convince the entire world of Europe and America of the true spirit of Asia, the civilization of Asia, the benevolence of Asia, and, going a step further, make manifest to them the mission of Japan. Let the people of Europe and America recognize, let the whole world recognize, that Japan is here and now shouldering the whole responsibility of Asia." ^a

In 1935, we find Major-General Hayao Tada, after referring to the changing international system, declaring:

"It may be regarded as the beginning of a racial war for emancipating the colored people, who form the greater part of the human inhabitants of the world from the enslaving oppression by whites and realizing equality and peace for all the human beings on earth. It may also be regarded as the beginning of a spirited war for rectifying the material civilization of the West by the moral civilization of the East. These two great missions from Heaven are the natural obligations which our Japanese Empire must bear." ⁴

One other quotation bearing upon the subject under discussion is warranted because it exhibits in such em-

^a See *Documents Illustrative of Japan's National Policy*, published by the Council of International Affairs, Nanking, China.

⁴ *Peking and Tientsin Times*, October 9, 1935. Reproduced in *Documents Illustrative of Japan's National Policy*.

phatic form the Japanese claim that their civilization is superior to that of the Western World.

In the March issue of *Amerasia*, 1939, there appears the translation of an article by General Doihara which he had contributed to a Japanese journal.*

The present Sino-Japanese war, he asserts, is for the creation of a new civilization. "Japan," he declares, "is fighting a fight for the renaissance of Oriental Culture. . . . Should they lose this war, it would mean an eternal defeat and subjugation of the Orient to Western civilization." This Western civilization, he says, "has now become paralyzed, bankrupt and degenerate." With the hope of rescuing the world from the chaotic condition into which Western culture has plunged it, he says, "Japan engaged herself in the Manchurian incident and now in the China incident. Of all the nations in the Orient, Japan alone can be found capable of carrying out this mission with responsibility. Because it is she that has best assimilated the modern world culture; it is neither India nor China but Japan herself that is preserving as the essential elements of her national life the cream of Oriental civilization, the Buddhist culture of India and the Confucian culture of China."

A leading authority upon conditions and events in the Orient is Mr. W. H. Chamberlain. In his volume *Japan Over Asia*, published in 1937, he says:

"The divine origin that is attributed to the [Japa-

* Chuo Koron (Central Review) November, 1938.

nese] Emperor imparts an element of religious sanction to the most exalted conceptions of Japan's destiny."

With regard to Japan's Pan-Asia doctrine, he says:

"Pan-Asianism is one of the potentially explosive ideas that have contributed to Japan's drive for expansion. It has become increasingly popular, especially among high military officers, both active and retired."

As regards the ultimate situation that would be created by the achievement of Pan-Asianism, he says:

"Under present conditions 'Asia for the Asiatics' in practice would be synonymous with 'Japan over Asia.'⁶ The Japanese superiority over other Oriental peoples in such factors of national strength as military and naval power, general literacy, industrial development, and military organization is so great that there would be almost no limit to Japanese expectations of supremacy in Asia if the influence of the West were withdrawn."⁷

It does not appear that Japan has had much success in securing acceptance by the other peoples of Asia of her special brand of Pan-Asianism, but that the doctrine has an influence within Japan is certain.

⁶ The title given by Mr. Chamberlain to his book.

⁷ *Op. cit.*, pp. 21-22.

CHAPTER SIX

THE TANAKA MEMORIAL

Because, in connection with the matter of Japan's ambitions and policies in the Far East, the so-called Tanaka Memorial has been often referred to, it is worth while to give a short account and description of this document.

Baron Tanaka, who died in 1929, was an important Japanese statesman who, during his years of public service, devoted much of his interest and attention to Manchuria and Mongolia. He served in the Russo-Japanese war, and was Japanese Minister of War during the period of the Japanese invasion of Siberia, which ended in 1922. In 1925 he became leader, in Japan, of the Seiyukai party, and became Japanese Premier in 1927, and, while occupying that position, announced a strong, or, as it was termed, a "positive" policy toward China. In June and July, 1927, there was held by the Japanese authorities a Far Eastern Conference, attended by civil and military officials connected with Manchuria and Mongolia. The proceedings of this Conference were not made public, but what has come to be known as the Tanaka Memorial purports to be the conclusions reached by this Conference, drawn up by Baron Tanaka and presented to the Japanese Emperor.

The Memorial is of considerable length and contains

quite elaborate details regarding the natural resources, actual and potential, of Manchuria and Mongolia, and elaborate advice regarding the construction of railways in those areas. The importance of these areas to Japan is strongly stressed, and advice given that Japan should proceed to strengthen her position in them, and avoid by some means the limitations placed upon her actions by the Nine Power Treaty. However, the importance of the Memorial has been due especially to the broad and highly aggressive and imperialistic policy it advocates for Japan. The following quotations taken from the English version of the document will sufficiently indicate the radical character of the policy proposed:

"For the sake of self-protection, as well as the protection of others, Japan cannot remove the difficulties in Eastern Asia unless she adopts a policy of 'blood and iron.' But in carrying out this policy we have to face the United States which has been turned against us by China's policy of fighting poison with poison. In the future, if we want to control China, we must first crush the United States just as in the past we had to fight in the Russo-Japanese War. But in order to conquer China we must first conquer Manchuria and Mongolia. In order to conquer the world we must first conquer China. If we succeed in conquering China, the rest of the Asiatic countries and the South Sea countries will fear us and surrender to us. Then the world will realize that Eastern Asia is ours and will not dare to violate our rights. This is the plan left to us by Emperor

Meiji, the success of which is essential to our national existence."

In another place, the Memorial says:

"The way to gain actual rights in Manchuria and Mongolia is to use this region as a base and under pretense of trade and commerce penetrate the rest of China. Armed with the rights already secured we shall seize the resources all over the country. Having China's entire resources at our disposal, we shall proceed to conquer India, the Archipelago, Asia Minor, Central Asia and even Europe. But to get control of Manchuria and Mongolia is the first step if the Yamato race wishes to distinguish itself in Continental Asia. . . . If we want to inaugurate a new policy and secure the permanent prosperity of our empire, a positive policy toward Manchuria and Mongolia is the only way."

Regarding the Nine Power Treaty, the Memorial declares:

"The Nine Power Treaty is entirely an expression of the spirit of commercial rivalry. It was the intention of England and America to crush our influence in China with their power of wealth. The proposed reduction of armaments is nothing but a means to limit our military strength, making it impossible for us to conquer the vast territory of China."

The Memorial also contains the statement: "We must beware of the day when China becomes unified and her industries become prosperous."

The Chinese have strongly emphasized the point that, since the attack upon Mukden in September, 1931, Japan appears to have been following, with considerable fidelity, the policy above outlined.

The Memorial, it would seem, first made its appearance in the fall of 1929 at about the time of the Kyoto Conference of the Institute of Pacific Relations, but, at that time, the Chinese were persuaded not to present it formally to the Conference, nor was its text made generally public. However, in 1931, a few days after the outbreak of the Japanese attack upon Manchuria, its full text was published in the *China Critic*, an English language newspaper published by the Chinese in Shanghai, and, since then, it has been repeatedly reprinted and distributed in pamphlet form.

The authenticity of the Memorial has been vigorously denied by the Japanese, and, in fact, they have had no difficulty in pointing out that the document contains misstatements of known facts which it is almost incredible that Baron Tanaka could have made—a strong evidence that, at least, he did not himself prepare the document. It is also to be observed that, so far as the author of the present book is aware, no original of the Memorial in Japanese language has been produced. The version, at the time of its first appearance, was in Chinese. It is further to be observed that the Chinese authorities have not committed themselves, in an unequivocal manner, to the complete authenticity of the document, but, none the less, they have continued to assert that it had a Japanese origin and that, in fact, it

was prepared under circumstances which give to it a very considerable value as a true exposé of Japan's imperialistic policies.

The most extended discussion by responsible representatives of China and Japan of the authenticity and significance of the Memorial, of which the present writer is aware, is that reported in the proceedings of the seventh meeting of the sixty-ninth session of the Council of the League of Nations, held on November 23, 1932.

The Memorial had been mentioned two days before in the previous meeting of the Council by the Chinese representative, Dr. Wellington Koo, as "a document which was frequently referred to in the Japanese press before the Manchurian situation arose in September, 1931, without ever raising any doubt as to its authenticity."¹

At the next meeting of the Council, the Japanese representative, Mr. Matsuoka said:

"I would say frankly and categorically that such a memorial was never made in Japan and never submitted to the Throne. To us Japanese, who know anything about the formalities and the wording observed in a memorial addressed to the Throne, the whole thing is really so ridiculous that we do not feel even called upon to deny it. In one of my political pamphlets, I refer to it and I give a denial that comes from intimate knowledge of the thing. I was rather closely connected with

¹ It will be noted that the Chinese representative did not himself declare that the document was authentically what it purported to be.

the late General Tanaka, a Prime Minister of Japan; and I know that is so. You can take it from me that such a memorial has never been addressed to our Throne." ² Mr. Matsuoka then asked the Chinese representative to produce to the Council evidence as to the authenticity of the document.

Replying to this request, Dr. Wellington Koo, at the eighth meeting of the Council, pointed out how closely the "positive policy" which Baron Tanaka had pursued, conformed, so far as it had developed, to that recommended in the Memorial. He further said: "If this document was forged at all, it must have been forged by a Japanese, because no Chinese could have so well conceived and outlined the policy which has been followed by modern Japan in every detail. You will understand that China for her part has reason to believe that this document is authentic." A little later on, Dr. Koo said: "On the question of the existence of a Japanese document, such evidence can be produced only by those who have access to the Imperial archives at Tokyo. In my opinion, however, the best proof on this question is really the whole situation in Manchuria today."

Dr. Koo also called attention to the fact that Mr. Matsuoka himself, in a pamphlet published in July, 1931, had written as follows of the Memorial:

² Mr. Matsuoka then went on to point out misstatements of facts contained in the Memorial which, he said, it was inconceivable that Baron Tanaka could have made. He also declared that the late Prime Minister, Mr. Inukai, had declared the Memorial to be a forgery.

"The original of this Tanaka Memorial is said to have been forged by a national of a certain country who resided in Peking, and there is even some reliable evidence. It seems to me, however, that it was probably forged by a certain Japanese who sold it to a Chinese at a high price, and the person who bought it believed it to be authentic." ^a

Mr. Morgan Young, for years editor of the *Kobe Chronicle*, in a volume entitled *Imperial Japan*, 1926-1938, says, with reference to the Far Eastern Conference at Tokyo, in June, 1937, that no general, official communique was issued to the press, but adds: "It would seem likely, however, that the document later published in China as the Tanaka Memorial, and pur-

^a At the eighth meeting of the Council, Mr. Matsuoka went into somewhat greater detail upon this point. He said: "I would like to make it clear, however, that in whatever I have said so far about the Tanaka Memorial, I have charged no one with forgery; I have merely said that it was a forged document. I have not said it was forged by any Chinese in my book . . . I said that I had information that it was concocted. Nor, so far as I can remember, did I give the name of the place in my book. I had before me information upon which I could rely that the document was concocted by a certain military attaché in Peiping, in connivance with some Chinese. I could hardly believe this, and felt that I had to be very cautious about accepting information of this sort, although I was told that it came from a reliable source. The information was to the effect that the document had been concocted by some irresponsible Japanese. . . . Later on, I learned from a strictly reliable source—and, to this day, I have not the slightest doubt that it was correct—that a certain Japanese drafted a report with secret information alleged to contain a plan of action on the part of the Japanese participants in the Tokyo Conference. That document was bought by the Chinese for 50,000 dollars. That is a fact, and, so far as I am concerned, I believe it to be true."

The foregoing extracts from the proceedings of the Council of the League of Nations are to be found in the League's *Official Journal* for December, 1932.

porting to have been presented to the Emperor on July 25, 1927, actually represents the findings of this Far Eastern Conference."

The foregoing represents all that the author of this volume has been able to learn regarding the Tanaka Memorial. Its actual origin, and how far it can be said to have emanated from an official or quasi-official source, remain in doubt.

CHAPTER SEVEN

FAR EASTERN POLICIES OF THE UNITED STATES: THEIR RELATION TO A STABLE PEACE IN THE FAR EAST

Reprint, with permission, of an article by the author which appeared in the April, 1940, issue of the American Journal of International Law.

Whether or not it was possible at the time for those who framed the treaties which terminated the World War of 1914-1918 to have better provided for the years of peace which were to follow, it is now generally recognized that the terms agreed upon by the Allied Powers and imposed upon Germany were not as wise as they might have been. This is a conclusion which experience has demonstrated, and, from this experience, it is proper that nations should derive wisdom with regard to any future treaties of peace which may be entered into. Hence it is that, since the outbreak of the present European war, there has been much discussion as to what terms should be imposed upon Germany if and when she is compelled to sue for peace. Especially is it recognized that, if a stable and satisfactory peace is to be realized, not only must the forces which attack international law and order and morality be decisively checked, but relations between states, economic and commercial as well as political, must be placed upon a basis that will tend to create conditions that will do essential justice to all the peoples concerned,

which will be mutually beneficial to all these peoples, and will thus furnish no adequate grounds for future international complaint and conflict. No treaty of peace can furnish a full guarantee that some nation or nations will not be spurred on by considerations of mere prestige, by mystical conceptions of race superiority, or by the baldest of imperialistic designs to break this peace, but, if this occurs, a wise treaty of peace can make clear to all other nations the iniquity of such action and predispose them to united and effective action to meet the situation thus created. In considerable measure, the treaty of peace can definitely provide what shall be done in that eventuality by the nations which desire the maintenance of law and order and justice in the international world. It may be further necessary to place upon a somewhat different basis than has previously obtained the rules which shall govern the rights and responsibilities of nations with regard to the status of aliens and their property and cultural interests residing or existing within their borders, and, of course, correlative to this, a definition of the rights and responsibilities of nations with regard to their own citizens and their interests located abroad. This last undertaking will be a most difficult one. So conflicting are the considerations involved that complete avoidance of opportunities for conflict can hardly be hoped for, but provision can be made for the just and peaceful settlement of these conflicts when they do arise.

The considerations which have been mentioned, which must enter into the framing of a just and wise

European treaty, also apply to the establishment of peace in the Far East.

As it is the primary purpose of this chapter to deal with the situation in the Far East as presented by the aggressions of Japan upon China, it becomes pertinent to consider in a specific way what conditions must be created within that vast area if a stable peace is to be established there—one that will be essentially just to all the Powers concerned and mutually beneficial to them all. And, in this connection, it will be necessary, if the inquiry is to take a realistic and practical form, to take into account not only the desires and policies of China but also the probable policies of the other interested Powers. Especially is this necessary with regard to the probable policies of the United States. And here it may be noted that it is certain that American Far Eastern policies will greatly influence, even if they do not wholly control, British policies, for it is known that, as a matter of exigent political expediency, if not wholly a matter of agreement as to political outlook and immediate interests, the British Government is, and will continue to be, anxious to maintain harmonious and cooperative relations with the United States. In truth, it is the writer's opinion that the British and American Governments are, and will continue to be, in agreement as to what is essential to the establishment of a satisfactory situation in the Far East, although it is possible that they may not always agree as to the exact steps to be taken to create that situation, and it may be that, at times, when there is full agreement as

to these steps, Great Britain may find it impractical to join in taking them because of immediate requirements growing out of the present war in Europe.

It is furthermore to be noted that there is every likelihood that France and other nations like Holland, Belgium and Portugal will be largely controlled in their Far Eastern policies by those adopted by Great Britain and the United States. Furthermore, it is certain that China herself will be greatly influenced by American policy and opinion as to what may be considered a satisfactory solution of her present national and international problems. It is not to be expected that China will, at the instance of the United States, make any concessions which will violate or infringe upon rights and interests which she deems essential to her as a sovereign and independent state or which she is convinced will operate to threaten the continuance of such sovereignty and independence; but, as the writer expects to show in the paragraphs which follow, it is not at all likely that the United States will wish China to make any such concessions.

In result, then, it appears that the Far Eastern policies of the United States will be largely decisive as to what will be the policies of the other Powers with Far Eastern interests, and highly influential upon the policies of China herself.

It is not always, perhaps only seldom, that one is able to predict with confidence what are to be international policies of a given State, but, in the present case, not only have the American people made known in an

indubitable and almost unanimous manner their general attitude toward the Chinese-Japanese conflict, but the American Government, by its official declarations and acts, has placed upon record its views with regard to the attempts of Japan to change the *status quo* in the Far East as established by the Washington Nine Power Treaty of 1922. In order to make plain this declared policy of the American Government it will be appropriate to list the specific declarations which have been made. These declarations have been made upon numerous occasions, but are to be found especially in the communications to Japan of October 6¹ and December 31, 1938.² However, the most comprehensive statement by the United States of its views regarding the purpose and scope of the Nine Power Treaty is that given in the letter of February 23, 1932, of Mr. Stimson, Secretary of State, to Senator Borah, then Chairman of the Committee of Foreign Relations of the United States Senate.³

The positions taken by the United States may be summarized and listed as follows:

1. The claim by the Japanese that a "new order" exists, or is coming into existence, in the Far East to which treaties of the past are not to be held necessarily applicable is definitely repudiated. In its communication to Japan of December 31, 1938, the American Government declared:

¹ Note of Oct. 6, 1938. Dept. of State Press Releases, Oct. 29, 1938, Vol. 19, pp. 283-286.

² Note of Dec. 31, 1938. *Ibid.*, Dec. 31, 1938, Vol. 19, pp. 490-493.

³ Dept. of State Publication No. 296.

"This Government is well aware that the situation [in the Far East] has changed. This Government is also well aware that many of the changes have been brought about by the action of Japan. This Government does not admit, however, that there is need or warrant for any one Power to take upon itself to prescribe what shall be the terms and conditions of a 'new order' in areas not under its sovereignty and to constitute itself the repository of authority and the agent of destiny in regard thereto."

It is significant that, in its note of about the same date, namely, of January 14, 1939,⁴ the British Government communicated to Japan a very similar statement. That note contained the following declaration:

"His Majesty's Government desires to make it clear that they are not prepared to accept or to recognize changes of the nature indicated [by Japan] which are brought about by force. They intend to adhere to the principles of the Nine Power Treaty, and cannot agree to the unilateral modification of its terms. . . . His Majesty's Government therefore cannot agree, as suggested by Japan, that the Treaty is obsolete or that its provisions no longer meet the situation, except in so far as the situation has been altered by Japan in contravention of its terms."

2. As appears from the above, the United States has unequivocally declared that Japan will be held

⁴ *London Times*, Jan. 16, 1939, p. 11; *New York Times*, Jan. 16, 1939, p. 7.

bound by its commitments made in the Nine Power Treaty.*

As regards the purpose and scope of the treaty, Secretary Stimson, in his letter to Senator Borah, declared:

"It must be remembered also that this treaty was one of several treaties and agreements entered into at the Washington Conference by the various Powers concerned, all of which were interrelated and interdependent. No one of these treaties can be disregarded without disturbing the general understanding and equilibrium which were intended to be accomplished and effected by the group of agreements arrived at in their entirety. . . . The willingness of the American Government to surrender its then commanding lead in battleship construction and leave its positions at Guam and in the Philippines without further fortifications, was predicated upon, among other things, the self-denying covenants contained in the Nine Power Treaty which assured the nations of the world not only of equal opportunity for their Eastern trade but also against the military aggrandizement of any other Power at the expense of China."

It clearly appears that the declaration that has just

* That is, until that treaty is amended or replaced by another treaty in accordance with the orderly processes prescribed by international law for the creation or amendment of international agreements. Both the United States, in its note of Dec. 31, 1938, and Great Britain, in its note of Jan. 14, 1939, declared to Japan that they did not regard treaties as necessarily eternal, and that they were prepared to consider any such changes in the Nine Power Treaty as existing facts might make desirable, but that such changes could rightfully be made only by orderly processes and agreement among the parties thereto.

been quoted was intended to operate as a warning to Japan as to the broad implications which the American Government would feel itself free to ascribe to a repudiation by Japan of her Nine Power Treaty commitments.

3. The American Government has declared that it continues to attach value and force to the Kellogg-Briand Peace Pact of 1928—a pact which, it will be remembered, was signed by nearly all the nations of the world, including Japan, and under which the signatory Powers agreed that “the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.” As evidencing the fact of the force and value attached to the Peace Pact, the United States has several times called its existence to the attention of contesting Powers in the Far East, and, in the Stimson-Borah letter, the following language was used:

“Six years later the policy of self-denial against aggression by a stronger against a weaker Power, upon which the Nine Power Treaty had been based, received a powerful reinforcement by the execution by substantially all the nations of the world of the Pact of Paris, the so-called Kellogg-Briand Pact. These two treaties represent independent but harmonious steps for the purpose of aligning the conscience and public opinion of the world in favor of a system of orderly development by the law of nations including the settlement of all controversies by methods of justice and peace instead of

by arbitrary force. The program for the protection of China from outside aggression is an essential part of any such development."

4. The American Government has declared in so many words that Japan, by her aggressions upon China, has violated her engagements contained in the Nine Power Treaty and the Peace Pact. This has also been the position taken by nearly all the other nations of the world, as represented especially in the resolutions adopted by the Assembly of the League of Nations.

5. The United States Government has repeatedly stated its view that the Open Door doctrine is the most beneficial one that can be applied to trade and commerce in the Far East, and has repeatedly declared its intention to abide by that doctrine and to insist that the parties signatory to the Nine Power Treaty do the same. So numerous have been these statements that it is not necessary to select any one of them for quotation.

6. That the United States, as a signatory to the Nine Power Treaty, considers itself obligated "to respect the sovereignty, the independence, and the territorial and administrative integrity of China," goes without saying. The United States has also, upon numerous occasions, declared that this respect is an integral part of the Open Door doctrine. Thus, to give but a single instance, the United States in its note of December 31, 1938, to Japan, spoke of the two principles as correlative, and declared that, as a matter of experience, it had been demonstrated that impairment of a nation's integrity

is almost inevitably followed by disregard of the Open Door as applied to that Nation. "Whenever any Government begins to exercise political authority in areas beyond the limits of its lawful jurisdiction," the note declared, "there develops inevitably a situation in which the nationals of that Government demand, and are accorded, at the hands of their Government, preferred treatment, whereupon equality of opportunity ceases to exist and discriminatory practices, productive of friction, prevail."

It will be noted that the Parties Signatory to the Nine Power Treaty have not undertaken, individually or collectively, to guarantee the sovereignty and territorial and administrative integrity of China. They have agreed no more than to respect this sovereignty and integrity. Thus, the engagement is different, for example, from that embodied in Article Ten of the Covenant of the League of Nations according to which the Members of the League have pledged themselves "to respect and preserve as against external aggression the territorial integrity and existing independence of all the Members of the League." Therefore, while it can be said that the Members of the League have not, as regards their Member, China, fulfilled the undertaking assumed by themselves, the same is not true of the United States which is not, and never has been, a Member of the League. However, inasmuch as the Nine Power Treaty is in the nature of a common declared policy with regard to China and is, in essence, an assurance given to China in return for various under-

takings upon her part, it would seem that, at least morally, and perhaps legally, an obligation rests upon the Signatories to see to it that the main purpose of the declared policy, namely, the sovereignty and territorial and administrative integrity of China, is not defeated, and especially not by one of their number. The expression "perhaps legally" is here used because it has never been certainly determined—indeed, the writer has not seen it carefully discussed—whether the rights and obligations accruing from the Nine Power Treaty are, in part or wholly, to be deemed joint or several or both joint and several. Whatever may be the final determination as to this, one cannot escape the conviction that the Treaty lays upon each of its Signatories a moral obligation of a high character not to give aid to a Signatory engaged in violating the sovereignty and territorial and administrative integrity of China if, by any legal action upon its own part, it can escape from doing so. And, of course, there is no question but that any of the Signatories has a right, under the Treaty, to protest to, and to take any action it may see fit against, any one of the Co-Signatories which acts in violation of the undertakings it has given to each one and all of the Signatories.

The foregoing observations have a direct bearing upon the question whether the Parties Signatory to the Nine Power Treaty have carried out in full measure their obligations under the Treaty in so far as they have permitted a violator of the Treaty to import from their ports materials for certain and necessary use in carrying out its aggressions upon China.

7. The United States has declared in unqualified terms that it will not give legal recognition, so far as its own treaty rights or those of its nationals in China are concerned, to any *de facto* situation—a very broad term—which is created by a violation of the sovereignty, the independence, or the territorial and administrative integrity of China. In still broader terms, the United States has made the same declaration with reference to violations of the Peace Pact of 1928. In its note of January 7, 1932,^a the terms of which have not been modified by any later statement, the United States Government declared:

"In view of the present situation [created by the military occupation by Japan of the Manchurian provinces of China] and of its rights and obligations therein, the American Government deems it to be its duty to notify both the Government of the Chinese Republic and the Imperial Japanese Government that it cannot admit the legality of any situation *de facto* nor does it intend to recognize any treaty or agreement entered into between those Governments, or agents thereof, which may impair the treaty rights of the United States or its Citizens in China, including those which relate to the sovereignty, the independence, or the territorial and administrative integrity of the Republic of China, or to the international policy relative to China, commonly known as the Open Door policy, and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by

^a Dept. of State Press Releases, Jan. 9, 1932, pp. 41-42.

means contrary to the covenants and obligation of the Pact of Paris of August 27, 1928, to which treaty both China and Japan, as well as the United States are parties."

It is well known that this doctrine or policy of non-recognition was accepted and declared by the Members of the League of Nations (except Japan) and embodied in the Report of the Assembly of the League on the Sino-Japanese Dispute, adopted on February 24, 1933. In that Report, it is declared with reference to the then existing régime in Manchuria: "They [the Member States of the League] will continue not to recognize this régime either *de jure* or *de facto*."

Later, the League, through an Advisory Committee which it established, sought to give effective implementation to this declaration by outlining the various actions which it would be appropriate for the Member States to do or not to do with relation to the unrecognized State of Manchukuo.¹

Whatever may have been the actual results thus far obtained from the Stimson and League doctrine of Non-Recognition, the doctrine has an important significance with reference to the sort of peace in the Far East with which the United States can be expected to be contented, for it is to be noted that the doctrine was declared by the United States in a manner that did not limit it in point of time, and, since its declaration, the United

¹ *American Journal of International Law*, Supplement. Vol. 27 (1933), p. 119, at p. 151. For details as to this, see the author's *The Sino-Japanese Controversy and the League of Nations*, p. 520 ff.

States has not, in any way, modified or weakened its stand upon this point. In this respect, the policy of President Roosevelt during his two terms of office has not differed from that of his predecessor, President Hoover. It may also be observed that, by official acceptances of the doctrine by other States and in still more general terms, there is support for those who hold that the doctrine has been received into the general *corpus* or body of accepted international law as a proper mode or means for discouraging the violation by states of their treaty and other international law obligations: in other words—to use a term of municipal law—as a sanction.^a

In view, then, of the fact that the United States has undertaken in a most explicit manner to refuse to recognize that a legal status can be changed by illegal means, it is clear that not only is it in the highest degree unlikely that the United States will bring influence to bear upon China to persuade her to accept conditions of peace with Japan which will represent gains obtained by Japan as result of violations by her of the Nine Power Treaty or of the Peace Pact, but that the United States will refuse to accept as binding upon herself any agreements which China, acting upon her own part, may feel herself compelled to make with Japan which may be deemed by the United States to be inconsistent with her own rights as embodied in her treaties with either China or Japan, or, for that matter, in violation of the Peace Pact of 1928. In short, if the United States continues to

^a Black, in his *Law Dictionary*, defines a sanction as "a penalty or punishment provided as a means of enforcing obedience to a law."

adhere to the non-recognition doctrine, as it is to be assumed she will do, China may expect support from the United States if she insists upon an effective reestablishment of the *status quo* as envisaged and provided for in 1922 by the Nine Power Treaty. It would seem that practically all the other nations which approved the League Assembly Report of 1933 will find it difficult to escape giving to China the same support, and especially is this true of Great Britain, which, as shown by the quotation earlier made from her note of January 14, 1939, has made her position in this respect so clear. What specific form, substantial or merely moral or negative, this support may take, it is impossible to foresee, for in international relations, as well as in other domains of human interests, practical exigencies have their influence upon the actions taken.

The foregoing paragraphs have made plain the extent to which the United States has stated in official form its views with regard to the maintenance and establishment in the Far East of a situation which will satisfy American treaty rights and provide for legitimate American commercial and other interests in China. This exposition makes evident that, happily for the two countries, there is no conflict between their rights or interests and that, therefore, there is not likely to be any serious divergencies in their policies.

From this exposition, it further appears that the Chinese, in defending their own national rights have, in fact, been also defending American rights and interests. This, the writer believes, is recognized by at

least the informed and thinking people of the United States. More than this, they appreciate that, in the long and valiant struggle the Chinese have been waging against their Japanese invaders, the Chinese have been resisting forces which threaten world order and even civilization itself. As to this, the writer ventures to repeat the closing words used by him in an article published in 1937: ⁹

"In conclusion, then, let this be said: While China is struggling to preserve her own national life she is also, as it happens, resisting the advance of forces which, if unchecked, threaten the continued existence of factors essential to the maintenance of international law and order. If such an international régime cannot be maintained, the existence of civilization itself will be threatened. The issues at stake in the Far East are thus world-wide in their significance and portentous in their possible results."

That the American Government, as well as the American people, appreciates and is influenced by this deeper and broader issue of the Far Eastern conflict, is certain. As evidence of this may be quoted the following from a letter of January 8, 1938,¹⁰ by Secretary of State Hull to the Senate of the United States in response to a request from that body for information regarding the number of Americans residing in China, and the amount of American capital invested in China.

⁹ *The Significance to the World of the Conflict in the Far East*. Published by the Chinese Cultural Society, New York City.

¹⁰ Dept. 7, State Press Releases, Jan. 15, 1938, Vol. 18, pp. 100-105.

After giving the information asked for, Secretary Hull felt himself obligated to add:

"The interest and concern of the United States in the Far Eastern situation, and in situations on this continent are not measured by the number of American citizens residing in a particular country at a particular moment nor by the amount of investment of American citizens there nor by the volume of trade. There is a broader and more fundamental interest—which is that orderly processes in international relationships be maintained. Referring expressly to the situation in the Far East, an area which contains approximately half the population of the world, the United States is deeply interested in supporting by peaceful means influences contributing to preservation and encouragement of orderly processes. This interest far transcends in importance the value of American trade with China or American investments in China; it transcends even the question of safeguarding the immediate welfare of American citizens in China."

In numerous of his public addresses and other utterances, Secretary of State Hull has emphasized the concern with which the American people view the attacks that are being made upon international law and order and morality as exemplified in the acts of Japan and certain of the European nations. President Roosevelt has also given repeated expression to this same concern. In his speech in Chicago, on October 5, 1937, he said:

"There can be no stability or peace either within

nations or between nations except under laws and moral standards adhered to by all. International anarchy destroys every foundation for peace. It jeopardizes either the immediate or the future security of every nation, large or small. It is, therefore, a matter of vital interest and concern to the people of the United States that the sanctity of international treaties and the maintenance of international morality be restored."

Finally, with regard to this matter of American material interests in the Far Eastern conflict, reinforced as it is by the American appreciation of the deeper and more fundamental issues involved and their general feeling of friendship for the Chinese people, and sympathy for them because of the unmerited sufferings to which they are being subjected, there is added the high indignation of the American people against the Japanese because of the cruel and inhuman manner in which the Japanese have been carrying on their war against the Chinese people. Especially have the Americans been revolted by the bombing by the Japanese of cities and towns without military significance and the resulting killing or maiming of thousands of Chinese noncombatants, including many women and children. Ambassador Crew, in his outspoken address on October 19, 1939, at Tokyo,¹¹ before the American-Japanese Society, referred to this general indignation when he informed his Japanese hearers that the American people had been "profoundly shocked over the widespread use of bombing in China." He might also have added that

¹¹ Dept. of State Bulletin, Nov. 11, 1939, Vol. 1, pp. 509-516.

the American people had been shocked by the extent to which the Japanese military and aviation forces had selected Chinese educational and other cultural establishments for destruction.

This matter of the general opinion of the American people as distinguished from, but harmonious with, the official utterances of their Government is dwelt upon in this chapter because, in the United States, public opinion, more than in most countries, determines the foreign policies of the Government. The significance of this fact was pointed out to the Japanese, undoubtedly as a warning, in the address of Ambassador Grew to which reference has just been made. After pointing out the opportunity which he had recently had to learn public opinion in America, he said:

"When public opinion is unanimous, or nearly unanimous, then governmental policy and action must and will reflect the opinion and wishes of the people as a whole. For the American Government is the servant of the American people. American public opinion with regard to recent and current developments in the Far East is very nearly unanimous, and that opinion is based not on mere hearsay or on propaganda but on facts"

Later in his speech, Ambassador Grew deemed it expedient again to warn his Japanese hearers as to the intimate relation in the United States between public opinion and government policies. He said: "When such opinion tends toward unanimity in any given issue, it is a force to be reckoned with, a force which the

Government cannot possibly overlook and will not fail to reflect in its policies and actions."

It scarcely needs to be pointed out that what Ambassador Grew said in his speech must have had the full approval of the authorities at Washington.

Thus far, in this paper, only the declarations of principles and policies by the American Government with reference to the Far East have been dealt with. It remains to consider what action this Government has taken in pursuance of these declarations.

In the first place, the United States Government has given financial aid to China. This, of course, has been in addition to the sums sent to China from private philanthropic sources. This official aid took the form on December 15, 1938, of a loan to China of \$25,000,000. This loan was in the form of a credit extended to a Chinese corporation by the United States Export-Import Bank. Ambassador Hu Shih, in an address on December 9, 1939, has said, with reference to the loan, that it was responsible for China's securing subsequently more credits from other countries amounting to over \$50,000,000. He added: "The world little recognizes that twenty-five million dollars' credit was a thousand times more significant than the figures might indicate, because this financial assistance came at a time when China's last main access to the sea had been cut off with the loss of Canton, and her morale probably at the lowest ebb. Future historians will surely say that the Export-Import credit of last December, not a very large amount in itself, had the magic effect of reviving and

buttressing the spirit and morale of the Chinese resistance, because it made China understand that she had not been deserted by her friends in her darkest hours of distress.¹²

In the second place, the United States has imposed what has come to be termed a "Moral Embargo" upon the export from the United States to Japan of certain commodities of direct military usefulness. These goods were, at first, airplanes and airplane parts. On December 20, 1939, Secretary of State Hull extended this embargo to include plans, plants, manufacturing rights, materials essential for the manufacture of airplanes, including aluminum and molybdenum, and technical information regarding high quality aviation gas. This embargo is termed a moral one because it imposes no legal restraints upon would-be exporters, for there are no statutes providing for this. However, though only advisory or admonitory in character, this embargo has been fully effective.

In the third place, the American Bureau of Foreign and Domestic Commerce has officially advised American exporters of all kinds of goods to Japan that it will be to their best interests to send goods to Japan only upon a cash in hand basis. This advice, given on June 6, 1938, reads (in part): "In view of all the factors involved it appears advisable that exporters should have a con-

¹² Extracts in *New York Times*, Dec. 10, 1939, p. 43, Dec. 21, 1939, p. 16. Under the Act of Congress of March 2, 1940, increasing the lending authority of the Export and Import Bank it is practically certain that China will receive a further loan of \$20,000,000. Indeed, on March 7 it was announced by the trustees of the Bank that this sum had been allocated to finance exports to China.

firmed irrevocable letter of credit in their hands before accepting orders for shipments to Japan."¹⁴ It is understood by the writer that this advice has been generally heeded with the result that, so far as the United States is concerned, its entire export trade with Japan is upon a cash-and-carry basis.

In the fourth place, and most important of all, the United States, on July 26, 1939, gave to Japan abrupt notification that it was exercising its right to terminate upon six months' notice its Treaty of Commerce and Navigation with Japan which had been in operation since 1911. This notification, it is known, was politically motivated, since there was no claim that the treaty was operating to the commercial disadvantage of the United States. The consternation with which this action by the United States was received in Japan is sufficient evidence of its importance.

It seems reasonably clear that the American Government had two purposes in view in abrogating this treaty with Japan.

The first of these purposes would appear to have been that the American Government desired its action to serve as a definite and serious warning to Japan that she might expect some strong action upon the part of the United States in case she should continue to disregard her obligations to the United States under her other treaties to which the United States is a party, of which treaties the Washington Nine Power Treaty is, of course, the most important.

¹⁴ Dept. of Commerce release from Finance Division to all District offices.

The second purpose had in view by the American Government in abrogating the treaty may safely be assumed to have been the freeing of its hands from the most-favored-nation provision of that treaty. Thus freed, the United States would be enabled to adopt and put into effect any commercial policies discriminating against Japan whether by way of export or import limitations or prohibitions that it might see fit, and without any possible claim that, by so doing, the United States was violating a treaty engagement of its own.

The writer has not seen the point elsewhere discussed, but he is of opinion that, under established doctrines of international law governing the subject of retaliations, it would have been proper for the United States to resort to discriminatory commercial action against Japan, even were the treaty of commerce and navigation not abrogated, provided this discriminatory action were explicitly declared to be retaliatory and for the purpose of bringing pressure to bear upon Japan in order to bring about a cessation of the illegal acts being committed by Japan against the interests of the United States and its citizens, and for compelling indemnification for injuries due to such illegal acts already committed. For, by every definition of the right of retaliation as recognized by international law, it is a right to resort to coercive action, under other circumstances illegal, in order to meet illegal acts being committed by the parties retaliated against. In other words, in cases of retaliation, acknowledged to be such, the existence of other normal obligations, whether of a treaty character or as embodied in generally

accepted international law, is without significance. However, this point is now of only academic importance, so far as the present relations of the United States with Japan are concerned, since the Japanese-American treaty has now come to an end.¹⁴

In view of the strong and unqualified positions taken by the United States in its official communications to Japan, which have been referred to in this chapter, it appears to the writer highly unlikely that the United States will enter into a new treaty of commerce and navigation with Japan until Japan has met the conditions contained in those communications. Indeed, it is the opinion of the writer that the United States will not consent even to enter upon formal negotiations for a new treaty until satisfactory assurances are received from Japan that she intends henceforth to abide by her treaty obligations, surrender advantages already obtained by illegal means, and make reasonable compensation for wrongful injuries already done to American interests in China.

It may, perhaps, be placed to the credit of the United States, in its dealing with the Sino-Japanese conflict, that President Roosevelt, during the period the so-called Neutrality Joint Resolution of 1937 was in force, refused to exercise the discretion vested in him by that Resolu-

¹⁴ Since the above was written, the author has noted that Professor Quincy Wright had earlier taken much the same position. See his article, "Legal Status of Economic Sanctions," in *Amerasia*, February, 1939. The subject was discussed by the Sanction Committee of the League of Nations in the Italy-Abyssinia case, but in that case there was the covenant of the League which could be held to overcome earlier treaty commitments.

tion to declare that a state of war existed between China and Japan and that, therefore, the provision of that Resolution prohibiting the export to either China or Japan from the United States of arms, ammunition or implements of war should be applied. This exercise by President Roosevelt of his discretion was almost certainly motivated, to a considerable extent, by the belief that such a prohibition would, upon balance, operate more to the disadvantage of China than to that of Japan, for China was in dire need of arms, ammunition and implements of war, because she was by no means adequately equipped to manufacture them herself, whereas Japan, so long as she could get the necessary raw materials, which, it is to be observed, did not come within the prohibition, could, by manufacture, satisfy her military needs.

Turning now from acts by the United States which can be said to have favored China in her conflict with Japan, to the debit column of the account is the fact that the United States has as yet taken no effective steps, beyond advising that transactions be based upon cash in hand, to prevent the export from the United States to Japan in very considerable quantities of such goods as oil, gasoline, scrap iron, steel and other goods vital to Japan in carrying on her war against China.

Although as a question of American constitutional and statutory law the matter is not perfectly clear, the general legal opinion in the United States has been that there does not exist sufficient executive, that is, presidential, authority to impose effective restraints upon this

trade; in other words, that these restraints can be effectively imposed only as authorized by congressional legislation. At any rate, it would appear that the executive branch of the American Government has not felt it wise, as a domestic proposition, to exercise what discretionary statutory powers it may have had without a Congressional approval previously secured. And, until the treaty of 1911 with Japan was terminated, the general view was that Congress itself could not act effectively without being subjected to the criticism that it was acting in violation of the most-favored-nation provision of the treaty.

Aside, however, from these legal considerations, there is a factor which still powerfully operates, and that is the unwillingness of the American people to approve acts upon the part of their Government which may lead to a war with Japan, and a strong fear that an embargo against Japan's imports from the United States or upon her exports to United States of a severity sufficient to hamper her seriously in her war with China, will lead Japan to reprisals or other steps which would make almost inevitable war between the two countries. At the same time, the evidence is clear that Americans very generally have deemed it most unfortunate, if not, as many think, highly discreditable, that the United States should have served, and be still serving, as a base of military supplies for Japan. It is true that in mitigation of this fact it has been argued that, should the United States refuse to engage in this trade, the only effect would be that the trade would be diverted to other

shores; but, since the outbreak of the present European war, this excuse has been canceled because it is now impossible for Japan to obtain military materials, in amounts anywhere near adequate, except from the United States.

This matter of a possible embargo by the United States of trade with Japan with the avowed purpose of making it impossible for her to continue her war against China is one with many facets, and cannot be dealt with in any comprehensive way in the present paper. All that can be here said is to point out some of the factors or influences which tend to indicate that the United States will resort to forms of strong commercial pressure upon Japan in case she does not abandon her aggressive and imperialistic policies.

In the first place, the termination of the Treaty of Commerce and Navigation with Japan certainly indicates that the Government of the United States considers that there is a possibility, if not a probability, that, in the near future, a situation will exist which will make it desirable that the United States should resort to commercial retaliatory action against Japan.

In the second place, it seems somewhat significant that the American Government, in its note of October 6, 1938, should have taken pains to call to the attention of the Japanese Government the fact that, contrary to the manner in which American interests in the Far East had been treated by the Japanese, the Government of the United States had "not sought either in its own territory or in the territory of third countries to establish

or influence the establishment of embargoes, import prohibitions, exchange controls, preferential restrictions, monopolies or special companies designed to eliminate or having the effect of eliminating Japanese trade and enterprises." It would seem clear that, by the use of this language, the American Government sought not only to specify the kinds of Japanese action to which it objected, but at least to suggest to the Japanese Government that, should the American Government see fit, it would be justified, by way of retaliation, in resorting to similar forms of action.

In the third place, there is, of course, the speech of President Roosevelt at Chicago, on October 5, 1937, in which he declared it to be "a matter of vital interest and concern to the people of the United States that the sanctity of international morality be restored"; that, "when an epidemic of world lawlessness is spreading, a quarantine is justified"; and that "positive endeavors to preserve peace" are needed in order that nations, tempted to violate their agreements and the rights of others may be persuaded to desist from such wrongdoing.

It is true that general public opinion in the United States did not, at the time, dominantly rally to the support of the implications evident in such strong statements as these, but, however much President Roosevelt may have been in advance of the then willingness of the people to enter upon positive action in defense of international law and order and of their own national interests, it is the belief of the writer that they have

been steadily, if slowly, advancing toward the position taken by the President in his Chicago speech. And especially have they shown this advancement in the matter of their willingness to support an embargo upon the export of implements of war, including scrap iron and high-grade aviation gasoline, to Japan. In the United States, as is known, there have been created and are now operating, processes for ascertaining with surprising accuracy the progress and status of public opinion upon specific policies, and that American popular opinion has been advancing in the direction that has been indicated is shown by the tests made by these agencies, the principal one of which is the so-called Gallup Poll.

It is known that, in the present session of the American Congress, proposals for the imposition of certain forms of embargo upon trade with Japan will be discussed,¹⁸ but it is impossible for anyone to predict with confidence what the action by Congress will be. Although the writer is compelled to close upon this uncertain note, he would repeat his conviction, expressed in the earlier parts of this chapter, that the United States will not give its support to any settlement of the Sino-Japanese situation which will conflict with the essential desires of the Chinese people.

¹⁸ For a list of the bills and resolutions relating to the Far East pending in the present Congress, see *Amerasia*, January, 1940. Pp. 508-509.

CHAPTER EIGHT

THE SIGNIFICANCE TO THE WORLD OF THE CONFLICT IN THE FAR EAST

*Reprint, with permission, of a paper published in 1937 by
The Chinese Cultural Society of New York. Certain quotations
earlier made in the present volume have been deleted.*

In 1915, Japan, with scarcely a claim of justification, presented to China a series of Twenty-One Demands which, had they been secured in their entirety, would have made China a dependency of Japan. Since then, the world has been aware of Japan's Eastern Asiatic ambitions and of her willingness to disregard the rights of other nations in order that these ambitions may be realized. The acts of Japan since September, 1931, when she began her invasion and military occupation of the Manchurian provinces of China have served to establish still more firmly, and to render practically universal, the opinion that Japan is an aggressively-minded nation; that she is not disposed to allow the rights and interests of other Powers to stand in the way of the accomplishment of her ends; and that considerations of morality and humanity are not to control the means by which these ends are to be attained. This general condemnation of Japan was authentically and formally declared when the Assembly of the League of Nations, in which more than forty nations were represented, adopted its report of February 24, 1933, and the United

States declared that it was in general accord with the facts found and the conclusions reached in that report.

Notwithstanding this general condemnation of her acts, Japan has continued to extend her military control over additional territories of China, and, since July 1937, has been employing her entire military force in the attempt to bring to full accomplishment her desire to dominate China. Again, through the League of Nations and the concurrence of the United States, almost all of the peoples of the civilized world have declared the guilt of Japan.

Though world judgment has thus been twice rendered, no joint writ of execution has been issued, and, in truth, there have been strong practical reasons why the issuance of such a writ has not been attempted. Nevertheless, it is important that the nations of the world should perceive the extent to which their own interests are involved in the contest now being waged in the Far East even if, for the present, they do not deem themselves in a position effectively to protect those interests. It is with these world interests, involved in the present undeclared Sino-Japanese war, that this chapter will be concerned.

A considerable number of Western nations, including the United States, have important commercial and financial interests in China, which, beyond reasonable doubt, will be seriously impaired should Japan succeed in bending China to her will. These economic interests are potential as well as already actual, and, in some cases, are supplemented by colonial and other political interests.

That these commercial and financial interests will be prejudicially affected, if not wholly destroyed, by further Japanese inroads upon China's territorial and administrative integrity was sufficiently indicated by the results that flowed from previous territorial extensions of Japan's authority. But, in order that there might be no reasonable doubt as to this, Japan, in 1934, through the "Official Spokesman" of her Foreign Office, gave notice to the world of her claim to restrict, when she might see fit, the commercial and financial dealings of other Powers with China. This notice was declared to be a "restatement and clarification" of Japan's policy and was sent to all Japanese envoys abroad for their guidance.

It is clear from the text of this declaration that, as to whether or not these financial and trade negotiations, even when carried on by China with individual nations, are to be deemed to come within the prohibited class described in the statement, will be for Japan to judge. Pointing out the significance of the claim of right asserted in this announcement, Mr. William R. Castle,¹ a former Under Secretary of State of the United States, declared in a published article:

"The policy as enunciated would certainly seem to make China a vassal State to Japan, to close the door on foreign trade in China, to be a flat repudiation of the Nine Power Treaty of 1922, and, indeed, of all treaties concerning China."

In order that Americans, at least, should not mis-

¹ "Japan's Monroe Doctrine," *New Herald Tribune*, May 6, 1934.

understand the scope of the policy that the Spokesman of the Japanese Foreign Office had declared, the Japanese Ambassador to the United States, in a statement which he authorized *The Evening Star* of Washington to publish, said: ^a

"All that Japan demands is to be consulted before any important transactions between the Chinese Government and foreign interests are concluded. . . . Should foreign business overlook this request, the responsibility will fall on the Chinese Government for having overlooked our warnings. . . . Japan must act and decide alone what is good for China. Legitimate business won't be interfered with by the Tokyo Government, but any assistance given to the Chinese which may be considered either to help them to continue their internal wars or to prepare themselves to fight Japan will have to be stopped."

This declaration, it will be noted, was made before the beginning of the present hostilities. It can, therefore, be imagined what will be the claims of Japan with regard to the control of commercial and financial relations of the Western Powers with Eastern Asia, should she succeed in her present military effort.

It is, of course, right and proper that the nations concerned should have regard for their Far Eastern economic and political interests, and especially is this so since Japan is under definite treaty commitments to respect them. Repeatedly, since 1900, Japan has de-

^a Issue of April 22, 1934.

clared that, in her dealings with China, she will be guided by the principle of equal opportunities and privileges for all nations, and this doctrine, known as the Open Door, was carefully defined and declared and given formal sanction by the Nine Power Treaty of 1922 which Japan signed. However, important as these financial, commercial, and, in some cases, political, interests may be, and however justifiable it may be that the nations possessing them should take the steps necessary to protect them from impairment or destruction, these interests are, after all of a materialistic character, and, therefore, not to be ranked as important as are certain other interests involved in the present Sino-Japanese struggle. These interests, as this chapter will seek to show, relate to the maintenance throughout the world of international law and order, and thus to the preservation of conditions essential to civilization itself.

During recent years the peoples of the world have watched with increasing concern the disregard by certain powerful and aggressive nations of established principles of international law; the violations by them of treaties voluntarily signed by them; and, in general, the avowal, and, in some instances, the putting into execution, of policies which involve flagrant invasions of the sovereign rights of other friendly and peaceful Powers. Supplementing these acts, the world has seen military operations carried on by inhumane methods and with little distinction made between combatants and non-combatants. Finally, throughout the civilized world, a great increase in armaments is taking place. The aggres-

sive States have subordinated their other national interests to the building up of powerful military and naval establishments, and, in sheer defence, the peacefully inclined States have felt themselves obliged to do likewise.

To this breakdown of the régime of international law and justice, Japan has contributed a large share. Twice, as has been pointed out, she has been formally indicted and brought to judgment before the bar of world opinion. Twice she has been found guilty of violations of established principles of international law and of disregard for her plighted word as embodied in treaties voluntarily signed by her under most solemn conditions, and she is now engaged in carrying out by force actions thus condemned. Should she be permitted to pursue these policies until her ends are attained she will give another blow to the already tottering structure of international order—a blow which may bring it in ruin to the ground and leave the world a prey to international anarchy. Under such circumstances it is not surprising that President Roosevelt in the noble speech which he delivered at Chicago, on October 5, should have sounded an alarm cry, and called upon the peace-loving nations of the world to unite for the purpose of saving for themselves and for others those ideals and modes of living which constitute civilization. "The political situation in the world," he said, "which of late has been growing progressively worse, is such as to cause grave concern and anxiety to all the peoples and nations who wish to live in peace and amity with their neighbors. . . . In-

nocent peoples and nations are being cruelly sacrificed to a greed for power and supremacy which is devoid of all sense of justice and humane consideration."

After pointing out the evils which threaten the world, should no check be given to international aggression effected by armed force, President Roosevelt continued:

"If those things come to pass in other parts of the world, let no one imagine that America will escape, that it may expect mercy, that this Western Hemisphere will not be attacked, and that it will continue tranquilly and peacefully to carry on the ethics and arts of civilization. If those days come, there will be no safety by arms, no help from authority, no answer in science. The storm will rage till every flower of culture is trampled and all human beings are levelled in a vast chaos. If those days are not to come to pass—if we are to have a world in which we can breathe freely and live in amity without fear—the peace loving nations must make a concerted effort to uphold laws and principles on which alone peace can rest secured. The peace-loving nations must make a concerted effort in opposition to those violations of treaties and those ignorings of humane instincts which today are creating a state of international anarchy and instability from which there is no escape through mere isolation or neutrality. Those who cherish their freedom and recognize and respect the equal right of their neighbors to be free and live in peace must work together for the triumph of law and moral principles in order that peace, justice and confidence may prevail in the world. There must be a return to a belief in the

pledged word, in the value of a signed treaty. There must be recognition of the fact that national morality is as vital as private morality."

There is still another feature of the tragic situation in the Far East which gives concern to the peace-loving and democratically-minded peoples of the world, and causes them to view with apprehension the extension of Japan's sway over additional areas and peoples.

Recent years have witnessed, in a number of important countries, the establishment of systems of government which involve the negation, both in practice and in principle, of the essentials of individual liberty. This spread of autocracy has been accompanied by the adoption in the countries concerned of the doctrine that the State is a political entity which has ends of its own to be subserved—ends which are independent of the welfare of the governed and of such a character that, it is argued, the lives and well-being of the governed may be wholly subordinated to the advancement of the political authority that is over them. Thus, according to this conception, the State becomes a mystical being in whose welfare the personal and intrinsic worth of the individual subject disappears. Human individuals thus become but means for securing the maintenance and increase of the political authority to which they are wholly subordinated. From this political theory there flows the totalitarian conception of the State, namely, that the sphere of governmental control may legitimately, and as a matter of expediency, be extended over every phase of

human life—over matters religious and cultural as well as over matters of a more materialistic character.

This elevation of political authority into transcendental realms, and the thereto attaching consequences to the communities directly affected, might be viewed with no great concern by the peoples of other States were it not for two facts. The first of these is that, whether or not necessarily involved in the theory itself, the States that have adopted the theory have vested dominating and controlling authority in the hands either of a single person—a dictator—or of the military branch of the government. The second of these world-disturbing facts is that those peoples which have accepted this conception of political rule, and certainly those in whose hands rests the ultimate controlling authority, are dissatisfied with the territorial extent of their respective dominions and are committed to the doctrine that every possible means may be employed for securing the ends they desire. These States are thus, in their foreign policies, aggressive, and regard themselves as justified, in the pursuance of these policies, in disregarding the restraints imposed upon them by long established principles of international law or by their own treaty commitments. In the light of these facts it can be seen that the existence of powerful States of the character that has been described is a matter of deep concern to other States, and that it is of vital interest that these autocratic and aggressively-minded States should not extend their authority over additional areas and peoples.

The foregoing observations are pertinent to the

present situation in the Far East because Japan is to be grouped among the States that have been described, and, indeed, in one respect which will be mentioned, Japan possesses a feature of government which is peculiarly dangerous to other countries with which she may have dealings.

Although, for nearly fifty years, Japan has possessed a written constitution, that instrument derives its existence and its authority wholly from the declared will of the Emperor, and, by its own terms, no change in its provisions may be proposed except by the Emperor himself. Furthermore, this autocratic constitutional basis is strengthened by the doctrine, which it is lese majesty to question, that the Emperor is a divine being, and is to be revered and obeyed as such. He is conceived of, not as an organ of the State but as the State. Thus, in person, he manifests the mystical or transcendental character of political authority which has been spoken of.

In practice, of course, the policies of Japan are formulated and executed by the public officials who happen to have in their hands the reins of political authority, and here enters the feature of the Japanese constitutional system which is such a source of danger to all other countries with which Japan may have dealings. This feature, unique to Japan, is that, by express constitutional provision supplemented by imperial ordinances having the full force of law, the military branches of the Government are placed in a position that removes them from effective control by the civil branches of the Government. Instead, therefore, of being agencies

whose sole function it is, when called upon, to enable the civil authorities to carry out the policies they decide upon, as is the case in all other constitutionally organized States, the military and naval General Staffs of Japan determine for themselves the policies that involve the employment of armed force. And the further unfortunate fact exists that, in such high esteem are the military virtues held in Japan, the military authorities are able to obtain popular support when they act independently of, and sometimes in direct opposition to, the will of the civil authorities. Thus, writing with regard to the situation existing in 1931, we find Ex-Secretary of State Stimson saying:

"The theory that the civilian government as the representatives of the entire people should command the loyalty of the army and the navy had not been generally accepted by the Japanese nation. The chiefs of those military services, instead of being subordinate to the Cabinet, had direct and independent access to the Emperor as the head of the State. The Western school of democratic thought was making progress, but that progress was slow and never fully shared by large elements of the population."¹

The fact that Japan's civil government is not able to control her own military forces is testified to by the numerous instances, especially during recent years, in which her armies have acted in total disregard of the solemn assurances given to foreign Powers by the repre-

¹ *The Far Eastern Crisis*, p. 8.

sentatives of her Foreign Office. Indeed, it has seemed at times as if the military authorities, as a matter of deliberate policy, have sought to show in as overt a manner as possible their independence of civil control. This independence was especially exhibited during the more than two years when the Council and Assembly of the League of Nations were seeking a solution of the difficult situation created in the Far East by the Japanese invasion and military occupation of the Manchurian provinces of China. Time after time, assurances were given by the representative of Japan at the table of the Council of the League or from the rostrum of the Assembly of the League, which, almost immediately, would be disregarded by the Japanese forces in the field.

That there is good reason for believing that the attack upon Manchuria, begun upon the night of September 18, 1931, was at the instances of the military authorities, and not as a result of directions received by them from the Japanese Government, is testified to by Mr. Stimson in the volume already quoted from. After pointing out that the events of the first few days following this attack showed that the Japanese army had acted in pursuance of a previously well-formulated military plan, Mr. Stimson says:

"The evidence was almost equally clear that the coup had not been engineered or acquiesced in by the civil authorities in Japan, but had probably taken place without their previous knowledge. This was the concurrent

opinion of well-informed observers on the spot, including our representatives not only in Japan but in China.”⁴

The fact that the Japanese civil authorities are unable to control the policies and actions of their own military forces necessarily presents a serious problem to all Powers with which Japan has dealings. International intercourse is carried on through the Foreign Offices of the several States. It is between them that communications are exchanged and undertakings given and received. If, however, there is no assurance that a Foreign Office will be able to carry out the policies it has declared or fulfil the promises it has made, negotiations with it are futile, and, in result, other nations are without any means whereby they may enter into understandings or cooperative relations with such a nation. It is true that, notwithstanding the inability of Japan's Foreign Office to speak with effective authority, other nations have continued to deal with Japan as a member of the Society of Nations. This, from considerations of general expediency, they have done, but it would be a matter of reason as well as of right should they say to Japan that so long as her Foreign Office is unable to speak with effective authority, they could not treat with her as an international associate, in other words, could have no formal or treaty relations with her.

Such a step as is here indicated would seem to be an extreme one, and yet it is not as extreme as that sanctioned by the Covenant of the League of Nations—an instrument the provisions of which have been approved

⁴ *Op. cit.*, p. 33.

by more than fifty of the sovereign States of the world. Article Sixteen of that instrument provides, in certain cases, for the severance by the members of the League not only of all commercial and financial relations with an offending State, but even of personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State whether a member of the League or not. Furthermore, this Article of the Covenant goes on to provide for the application of military as well as of other forms of pressure upon the offending State.

One further factor that emphasizes the world importance of the present conflict in the Far East needs to be mentioned. Japan has avowed that it is her intention to continue her armed pressure upon China until a "knock-out" blow has been delivered—in other words, until China becomes completely subject to her will. Japan claims that, when this is accomplished, conditions in the Far East will be stabilized. But will this be so? For two major reasons it is impossible to believe this. In the first place, there is Russia, and if, in the international field one can be certain of anything, it is that Russia will not accept as permanent the situation that will be created even if the Japanese remain satisfied with control over only North China. With Japan and Russia thus in direct contact along an extended boundary line, and Russia's fears for her Eastern Siberian and her Pacific Maritime Provinces heightened, no one can reasonably believe that the situation will be stabilized.

The second major reason for disbelief that the suc-

cessful imposition by Japan of her will upon China will stabilize conditions in the Far East is the problem that will be presented by a subject China. Whatever other elements of national ability the Japanese may have, it is clear that, as a people, they are without those psychological or imponderable qualities which are needed for successful rule over subject races. They may possess the needed ability to establish a strong police and an efficient administrative system over a conquered people, but, to a marked degree, they have shown an inability so to deal with subject peoples as to render them content with their servitude. But, even should the Japanese exhibit genius in this respect, the task of peacefully ruling China, or a considerable part of it, would be an impossible one. Under alien oppression, however long continued, it is certain that such a great and culturally homogeneous people as the Chinese will not surrender their desire to regain their freedom to live and develop according to the dictates of their own national genius. If Japan should succeed in obtaining dominion over China there will be created, as long as this dominion lasts, another vast aggregate of unreconciled individuals. Thus, instead of making for peace, the world will have inflicted upon it another focus of disaffection, another situation which, until corrected, will strongly tend to provoke war upon a wide scale.

In conclusion, then, let this be said: While China is struggling to preserve her own national life she is also, as it happens, resisting the advance of forces which, if unchecked, threaten the continued existence of factors

essential to the maintenance of international law and order. If such an international régime cannot be maintained, the existence of civilization itself will be threatened. The issues at stake in the Far East are thus world-wide in their significance and portentous in their possible results.

APPENDIX A

TEXT OF NINE-POWER TREATY

ARTICLE I

The Contracting Powers, other than China, agree:

(1) To respect the sovereignty, the independence, and the territorial and administrative integrity of China:

(2) To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government:

(3) To use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China;

(4) To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and from countenancing action inimical to the security of such States.

ARTICLE II

The Contracting Powers agree not to enter into any treaty, agreement, arrangement, or understanding, either with one another, or, individually or collectively, with any Power or Powers, which would infringe or impair the principles stated in Article I.

ARTICLE III

With a view to applying more effectually the principles of the Open Door or equality of opportunity in China for the trade and industry of all nations, the Contracting Powers, other than China, agree they will not seek, nor support their respective nationals in seeking:

(a) Any arrangement which might purport to establish in favor of their interests any general superiority of rights with respect to commercial or economic development in any designated region of China;

(b) Any such monopoly or preference as would deprive the nationals of any other Power of the right of undertaking any legitimate trade or industry in China, or of participating with the Chinese Government, or with any local authority, in any category of public enterprise, or which by reason of its scope, duration or geographical extent is calculated to frustrate the practical application of the principle of equal opportunity.

It is understood that the foregoing stipulations of this Article are not to be so construed as to prohibit the acquisition of such properties or rights as may be necessary to the conduct of a particular commercial, industrial, or financial undertaking or to the encouragement of invention and research.

China undertakes to be guided by the principles stated in the foregoing stipulations of this Article in dealing with applications for economic rights and privileges from Governments and nationals of all foreign countries, whether parties to the present Treaty or not.

ARTICLE IV

The Contracting Powers agree not to support any agreements by their respective nationals with each other designed to create Spheres of Influence or to provide for the enjoyment of mutually exclusive opportunities in designated parts of Chinese territory.

ARTICLE V

China agrees that, throughout the whole of the railways in China, she will not exercise or permit unfair discrimination of any kind. In particular there shall be no discrimination whatever, direct or indirect, in respect of charges or of facilities on the ground of the nationality of passengers or the countries from which or to which they are proceeding, or the origin or ownership of goods or the country from which or to which they are

consigned, or the nationality or ownership of the ship or other means of conveying such passengers or goods before or after their transport on the Chinese railways.

The Contracting Powers, other than China, assume a corresponding obligation in respect of any of the aforesaid railways over which they or their nationals are in a position to exercise any control in virtue of any concession, special agreement or otherwise.

ARTICLE VI

The Contracting Powers, other than China, agree fully to respect China's rights as a neutral in time of war to which China is not a party; and China declares that when she is a neutral she will observe the obligations of neutrality.

ARTICLE VII

The Contracting Powers agree that, whenever a situation arises which in the opinion of any one of them involves the application of the stipulations of the present Treaty, and renders desirable discussion of such application, there shall be full and frank communication between the Contracting Powers concerned.

ARTICLE VIII

Powers not signatory to the present Treaty, which have Governments recognized by the Signatory Powers and which have treaty relations with China, shall be invited to adhere to the present Treaty. To this end the Government of the United States will make the necessary communications to non-Signatory Powers and will inform the Contracting Powers of the replies received. Adherence by any Power shall become effective on receipt of notice thereof by the Government of the United States.

ARTICLE IX

The present Treaty shall be ratified by the Contracting Powers in accordance with their respective constitutional methods and shall take effect on the date of the deposit of all the ratifications, which shall take place at Washington as soon as possible. The Government of the United States will transmit to the other

Contracting Powers a certified copy of the procès-verbal of the deposit of ratification.

The present Treaty, of which the English and French texts are both authentic, shall remain deposited in the archives of the Government of the United States, and duly certified copies thereof shall be transmitted by that Government to the other Contracting Powers.

In faith whereof the above-named Plenipotentiaries have signed the present Treaty.

Done at the City of Washington the sixth day of February, one thousand nine hundred and twenty-two.

[Here follow signatures.]

APPENDIX B

LETTER OF SECRETARY OF STATE STIMSON TO SENATOR BORAH,

MADE PUBLIC, FEBRUARY 24, 1932¹

February 23, 1932.

MY DEAR SENATOR BORAH:

You have asked my opinion whether, as has been sometimes recently suggested, present conditions in China have in any way indicated that the so-called Nine-Power Treaty has become inapplicable or ineffective or rightly in need of modification, and if so, what I considered should be the policy of this Government.

This treaty, as you of course know, forms the legal basis upon which now rests the "open door" policy towards China. That policy, enunciated by John Hay in 1899, brought to an end the struggle among various Powers for so-called spheres of interest in China which was threatening the dismemberment of that empire. To accomplish this Mr. Hay invoked two principles: (1) equality of commercial opportunity among all nations in dealing with China, and (2) as necessary to that equality the preservation of China's territorial and administrative integrity. These principles were not new in the foreign policy of America. They had been the principles upon which it rested in its dealings with other nations for many years. In the case of China they were invoked to save a situation which not only threatened the future development and sovereignty of that great Asiatic people, but also threatened to create dangerous and constantly increasing rivalries between the other nations of the world. War had already taken place between Japan and China. At the close of that war three other nations intervened

¹ Department of State Press Releases, February 27, 1932.

to prevent Japan from obtaining some of the results of that war claimed by her. Other nations sought and had obtained spheres of interest. Partly as a result of these actions a serious uprising had broken out in China which endangered the legations of all of the Powers at Peking. While the attack on those legations was in progress, Mr. Hay made an announcement in respect to this policy as the principle upon which the Powers should act in the settlement of the rebellion. He said:

The policy of the Government of the United States is to seek a solution which may bring about permanent safety and peace to China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly Powers by treaty and international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese Empire.

He was successful in obtaining the assent of the other Powers to the policy thus announced.

In taking these steps Mr. Hay acted with the cordial support of the British Government. In responding to Mr. Hay's announcement, above set forth, Lord Salisbury, the British Prime Minister, expressed himself "most emphatically as concurring in the policy of the United States."

For 20 years thereafter the "open door" policy rested upon the informal commitments thus made by the various Powers. But in the winter of 1921 to 1922, at a conference participated in by all of the principal Powers which had interests in the Pacific, the policy was crystallized into the so-called Nine-Power Treaty, which gave definition and precision to the principles upon which the policy rested. In the first article of that treaty, the Contracting Powers, other than China agreed:

1. To respect the sovereignty, the independence and the territorial and administrative integrity of China.
2. To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government.
3. To use their influence for the purpose of effectually

establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China.

4. To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and from countenancing action inimical to the security of such States.

This treaty thus represents a carefully developed and matured international policy intended, on the one hand, to assure to all of the contracting parties their rights and interests in and with regard to China, and on the other hand, to assure to the people of China the fullest opportunity to develop without molestation their sovereignty and independence according to the modern and enlightened standards believed to maintain among the peoples of this earth. At the time this treaty was signed, it was known that China was engaged in an attempt to develop the free institutions of a self-governing republic after her recent revolution from an autocratic form of government; that she would require many years of both economic and political effort to that end; and that her progress would necessarily be slow. The treaty was thus a covenant of self-denial among the Signatory Powers in deliberate renunciation of any policy of aggression which might tend to interfere with that development. It was believed—and the whole history of the development of the "open door" policy reveals that faith—that only by such a process, under the protection of such an agreement, could the fullest interests not only of China but of all nations which have intercourse with her best be served.

In its report to the President announcing this treaty, the American Delegation, headed by the then Secretary of State, Mr. Charles E. Hughes, said:

It is believed that through this treaty the "open door" in China has at last been made a fact.

During the course of the discussions which resulted in the treaty, the chairman of the British Delegation, Lord Balfour, had stated that

The British Empire Delegation understood that there was no representative of any Power around the table who thought that the old practice of "spheres of interest" was either advocated by any government or would be tolerable to this conference. So far as the British Government were concerned, they had, in the most formal manner, publicly announced that they regarded this practice as utterly inappropriate to the existing situation.

At the same time the representative of Japan, Baron Shidehara, announced the position of his Government as follows:

No one denies to China her sacred right to govern herself. No one stands in the way of China to work out her own great national destiny.

The treaty was originally executed by the United States, Belgium, the British Empire, China, France, Italy, Japan, the Netherlands, and Portugal. Subsequently it was also executed by Norway, Bolivia, Sweden, Denmark, and Mexico. Germany has signed it but her parliament has not yet ratified it.

It must be remembered also that this treaty was one of several treaties and agreements entered into at the Washington Conference by the various Powers concerned, all of which were interrelated and interdependent. No one of these treaties can be disregarded without disturbing the general understanding and equilibrium which were intended to be accomplished and effected by the group of agreements arrived at in their entirety. The Washington Conference was essentially a disarmament conference, aimed to promote the possibility of peace in the world not only through the cessation of competition in naval armament but also by the solution of various other disturbing problems which threatened the peace of the world, particularly in the Far East. These problems were all interrelated. The willingness of the American Government to surrender its then commanding lead in battleship construction, and to leave its positions at Guam and in the Philippines without further fortification, was predicated upon, among other things, the self-denying covenants contained in the Nine-Power Treaty,

which assured the nations of the world not only of equal opportunity for their eastern trade but also against the military aggrandizement of any other Power at the expense of China. One can not discuss the possibility of modifying or abrogating those provisions of the Nine-Power Treaty without considering at the same time the other promises upon which they were really dependent.

Six years later the policy of self-denial against aggression by a stronger against a weaker Power, upon which the Nine-Power Treaty had been based, received a powerful reinforcement by the execution by substantially all the nations of the world of the Pact of Paris, the so-called Kellogg-Briand Pact. These two treaties represent independent but harmonious steps taken for the purpose of aligning the conscience and public opinion of the world in favor of a system of orderly development by the law of nations including the settlement of all controversies by methods of justice and peace instead of by arbitrary force. The program for the protection of China from outside aggression is an essential part of any such development. The signatories and adherents of the Nine-Power Treaty rightly felt that the orderly and peaceful development of the 400,000,000 of people inhabiting China was necessary to the peaceful welfare of the entire world and that no program for the welfare of the world as a whole could afford to neglect the welfare and protection of China.

The recent events which have taken place in China, especially the hostilities which having been begun in Manchuria have latterly been extended to Shanghai, far from indicating the advisability of any modification of the treaties we have been discussing, have tended to bring home the vital importance of the faithful observance of the covenants therein to all of the nations interested in the Far East. It is not necessary in that connection to inquire into the causes of the controversy or attempt to apportion the blame between the two nations which are unhappily involved; for regardless of cause or responsibility, it is clear beyond peradventure that a situation has developed which can not, under any circumstances, be reconciled with the obligations of the covenants of these two treaties, and that if

the treaties had been faithfully observed such a situation could not have arisen. The signatories of the Nine-Power Treaty and of the Kellogg-Briand Pact who are not parties to that conflict are not likely to see any reason for modifying the terms of those treaties. To them the real value of the faithful performance of the treaties has been brought sharply home by the perils and losses to which their nationals have been subjected in Shanghai.

That is the view of this Government. We see no reason for abandoning the enlightened principles which are embodied in these treaties. We believe that this situation would have been avoided had these covenants been faithfully observed, and no evidence has come to us to indicate that a due compliance with them would have interfered with the adequate protection of the legitimate rights in China of the signatories of those treaties and their nationals.

On January 7th last, upon the instruction of the President, this Government formally notified Japan and China that it would not recognize any situation, treaty, or agreement entered into by those Governments in violation of the covenants of these treaties, which affected the rights of our Government or its citizens in China. If a similar decision should be reached and a similar position taken by the other governments of the world, a caveat will be placed upon such action which, we believe, will effectively bar the legality hereafter of any title or right sought to be obtained by pressure or treaty violation, and which, as has been shown by history in the past, will eventually lead to the restoration to China of rights and titles of which she may have been deprived.

In the past our Government, as one of the leading Powers on the Pacific Ocean, has rested its policy upon an abiding faith in the future of the people of China and upon the ultimate success in dealing with them of the principles of fair play, patience, and mutual goodwill. We appreciate the immensity of the task which lies before her statesmen in the development of her country and its Government. The delays in her progress, the instability of her attempts to secure a responsible government, were foreseen by Messrs. Hay and Hughes and their contemporaries and were the very obstacles which the policy

of the "open door" was designed to meet. We concur with those statesmen, representing all the nations, in the Washington Conference who decided that China was entitled to the time necessary to accomplish her development. We are prepared to make that our policy for the future

Very sincerely yours,

HENRY L. STIMSON

THE HONORABLE

WILLIAM E. BORAH,

United States Senate.

APPENDIX C

PACT OF PARIS

(Signed, August 27, 1928)

ARTICLE 1.—The High Contracting Parties solemnly declare, in the names of their respective peoples, that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

ARTICLE 2.—The High Contracting Parties agree that the settlement or solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

ARTICLE 3.—The present Treaty shall be ratified by the High Contracting Parties named in the preamble in accordance with their respective constitutional requirements and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited. . . .

APPENDIX D

IDENTIC NOTE SENT BY THE AMERICAN GOVERNMENT TO THE GOVERNMENTS OF CHINA AND JAPAN

JANUARY 7, 1932.

With the recent military operations about Chinchow, the last remaining administrative authority of the Government of the Chinese Republic in South Manchuria, as it existed prior to September 18, 1931, has been destroyed. The American Government continues confident that the work of the neutral commission recently authorized by the Council of the League of Nations will facilitate an ultimate solution of the difficulties now existing between China and Japan. But in view of the present situation and of its own rights and obligations therein, the American Government deems it to be its duty to notify both the Government of the Chinese Republic and the Imperial Japanese Government that it can not admit the legality of any situation *de facto* nor does it intend to recognize any treaty or agreement entered into between those governments, or agents thereof, which may impair the treaty rights of the United States or its citizens in China, including those which relate to the sovereignty, the independence, or the territorial and administrative integrity of the Republic of China, or to the international policy relative to China, commonly known as the open door policy; and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the pact of Paris of August 27, 1928, to which treaty both China and Japan, as well as the United States, are parties.

APPENDIX E

U. S. NOTE TO JAPAN REGARDING JAPANESE VIOLATION OF AMERICAN RIGHTS IN CHINA¹

Text of a note dated October 6, 1938, which the American Ambassador to Japan, Mr. Joseph C. Grew, addressed, under instruction, to the Japanese Minister for Foreign Affairs, His Excellency Prince Fumimaro Konoe:

The Government of the United States has had frequent occasion to make representations to Your Excellency's Government in regard to action taken and policies carried out in China under Japanese authority to which the Government of the United States takes exception as being, in its opinion, in contravention of the principle and the condition of equality of opportunity or the "Open Door" in China. In response to these representations, and in other connections, both public and private, the Japanese Government has given categorical assurances that equality of opportunity or the Open Door in China will be maintained. The Government of the United States is constrained to observe, however, that notwithstanding the assurances of the Japanese Government in this regard violations by Japanese agencies of American rights and interests have persisted.

As having, by way of illustration, a bearing upon the situation to which the Government of the United States desires to invite the attention of the Japanese Government, it is recalled that at the time of the Japanese occupation of Manchuria the Japanese Government gave assurances that the Open Door in Manchuria would be maintained. However, the principal economic activities in that area have been taken over by special companies which are controlled by Japanese nationals and

¹ Department of State Press Releases, October 29, 1938.

which are established under special charters according them a preferred or exclusive position. A large part of American enterprise which formerly operated in Manchuria has been forced to withdraw from that territory as a result of the preferences in force there. The arrangements between Japan and the régime now functioning in Manchuria allow the free movement of goods and funds between Manchuria and Japan while restricting rigidly the movement of goods and funds between Manchuria and countries other than Japan.

This channeling of the movement of goods is effected primarily by means of exchange control exercised under the authority of regulations issued under an enabling law which provide expressly that for the purposes of the law Japan shall not be considered a foreign country nor the Japanese yen a foreign currency. In the opinion of my Government equality of opportunity or the Open Door has virtually ceased to exist in Manchuria notwithstanding the assurances of the Japanese Government that it would be maintained in that area.

The Government of the United States is now apprehensive lest there develop in other areas of China which have been occupied by Japanese military forces since the beginning of the present hostilities a situation similar in its adverse effect upon the competitive position of American business to that which now exists in Manchuria.

On April 12, 1938, I had occasion to invite the attention of Your Excellency's predecessor to reports which had reached the Government of the United States indicating that discrimination in favor of Japanese trade with north China was likely to be effected by means of exchange control and to ask for assurances that the Japanese Government would not support or countenance financial measures discriminatory against American interests. Although the Minister for Foreign Affairs stated then that the Japanese Government would continue to support the principle of equal opportunity or the Open Door in China, no specific reply has yet been made by the Japanese Government on the subject of these representations.

The Government of the United States now learns that the Japanese authorities at Tsingtao have in effect established an

exchange control, that they are exercising a discretionary authority to prohibit exports unless export bills are sold to the Yokohama Specie Bank, and that the bank refuses to purchase export bills except at an arbitrary rate far lower than the open market rate prevailing at Tientsin and Shanghai. A somewhat similar situation apparently prevails at Chefoo. Furthermore, reports continue to reach the American Government that a comprehensive system of exchange control will soon be established throughout north China. Control of foreign exchange transactions gives control of trade and commercial enterprise, and the exercise, either directly or indirectly, by the Japanese authorities of control of exchange in north China would place those authorities in position to thwart equality of opportunity or free competition between Japan and the United States in that area. In such a situation, imports from and exports to the United States, as well as the choice of dealers in north China, would be entirely subjected to the dispensation of the Japanese authorities. Notwithstanding the short time that exchange control has been enforced in Tsingtao, two cases of discrimination have already been brought to the attention of the Government of the United States. In one instance an American dealer in a staple commodity has been unable to export to the United States because Japanese authorities there have insisted that his export bills be sold to a Japanese bank at a rate so far below the current rate of exchange of the Chinese currency in the open market that such transactions would involve a loss rather than a profit; but a Japanese competitor recently completed a large shipment invoiced at a price in United States dollars which was equivalent to the local market price calculated at the current open market rate. In the other instance, an American firm was prevented from purchasing tobacco in Shantung unless it should purchase so-called Federal Reserve notes or yen currency with foreign exchange and at an arbitrary and low rate of exchange, conditions not imposed upon the company's Japanese or Chinese competitors.

The Government of the United States has already pointed out to the Japanese Government that alterations of the Chinese customs tariff by the régimes functioning in those portions of

China occupied by Japanese armed forces and for which the Japanese Government has formally assured its support are arbitrary and illegal assumptions of authority for which the Japanese Government has an inescapable responsibility. It is hardly necessary to add that there can be no equality of opportunity or Open Door in China so long as the ultimate authority to regulate, tax, or prohibit trade is exercised, whether directly or indirectly, by the authorities of one "foreign" power in furtherance of the interests of that power.

It would appear to be self-evident that a fundamental prerequisite of a condition of equality of opportunity or Open Door in China is the absence in the economic life of that country of preferences or monopolistic rights operating directly or indirectly in favor of any foreign country or its nationals. On July 4, I spoke to General Ugaki of the desire of the American Government that there be avoided such restrictions and obstacles to American trade and other enterprises as might result from the setting up of special companies and monopolies in China. The Minister was so good as to state that the Open Door in China would be maintained and that the Government of the United States might rest assured that the Japanese Government would fully respect the principle of equal opportunity.

Notwithstanding these assurances, the provisional régime in Peiping announced on July 30th the inauguration as of the following day of the China Telephone and Telegraph Company, the reported purpose of this organization being to control and to have exclusive operation of telephone and telegraph communications in north China. There was organized in Shanghai on July 31st the Central China Telecommunications Company, and the Special Service Section of the Japanese Army has informed foreign cable and telegraph companies that the new company proposes to control all the telecommunications in central China. According to a semiofficial Japanese press report, there was organized at Shanghai on July 28 the Shanghai Inland Navigation Steamship Company, to be controlled by Japanese, the reported object of which is to control water transportation in the Shanghai delta area. According to

information which has reached my Government, a Japanese company has been organized to take over and operate the wharves at Tsingtao which have hitherto been publicly owned and operated. Should such a development occur, all shipping of whatever nationality would become dependent upon a Japanese agency for allotments of space and stevedoring facilities. The wool trade in north China is now reported to be a Japanese monopoly and a tobacco monopoly in that area is reported to be in process of formation. Moreover, according to numerous reports which have been reaching my Government, the Japanese Government is proceeding with the organization of two special promotion companies which it has chartered and which it will control with the object of investing in, unifying, and regulating the administration of certain large sectors of economic enterprise in China.

The development of which I have made mention are illustrative of the apparent trend of Japanese policy in China and indicate clearly that the Japanese authorities are seeking to establish in areas which have come under Japanese military occupation general preferences for, and superiority of, Japanese interests, an inevitable effect of which will be to frustrate the practical application of the principle of the Open Door and deprive American nationals of equal opportunity.

I desire also to call Your Excellency's attention to the fact that unwarranted restrictions placed by the Japanese military authorities upon American nationals in China—notwithstanding the existence of American treaty rights in China and the repeated assurances of the Japanese Government that steps had been taken which would insure that American nationals, interests, and properties would not be subject to unlawful interference by Japanese authorities—further subject American interests to continuing serious inconvenience and hardship. Reference is made especially to the restrictions placed by the Japanese military upon American nationals who desire to reenter and reoccupy properties from which they have been driven by the hostilities and of which the Japanese military have been or still are in occupation. Mention may also be made of the Japanese censorship of and interference with American

mail and telegrams at Shanghai, and of restrictions upon freedom of trade, residence and travel by Americans, including the use of railways, shipping, and other facilities. While Japanese merchant vessels are carrying Japanese merchandise between Shanghai and Nanking, those vessels decline to carry merchandisc of other countries, and American and other non-Japanese shipping is excluded from the lower Yangtze on the grounds of military necessity. Applications by American nationals for passes which would allow them to return to certain areas in the lower Yangtze Valley have been denied by the Japanese authorities on the ground that peace and order have not been sufficiently restored, although many Japanese merchants and their families are known to be in those areas.

American nationals and their interests have suffered serious losses in the Far East arising from causes directly attributable to the present conflict between Japan and China, and even under the most favorable conditions an early rehabilitation of American enterprise in China and of American trade with China cannot be expected. The American Government, therefore, finds it all the more difficult to reconcile itself to a situation in which American nationals must contend with continuing unwarranted interference with their rights at the hands of the Japanese authorities in China and with Japanese actions and policies which operate to deprive American trade and enterprise of equality of opportunity in China. It is also pertinent to mention that in Japan, too, American trade and other interests are undergoing severe hardships as a result of the industrial, trade, exchange and other controls which the Japanese Government has imposed incident to its military operations in China.

While American interests in the Far East have been thus treated at the hands of the Japanese authorities, the Government of the United States has not sought either in its own territory or in the territory of third countries to establish or influence the establishment of embargoes, import prohibitions, exchange controls, preferential restrictions, monopolies or special companies designed to eliminate or having the effect of eliminating Japanese trade and enterprise. In its treatment

of Japanese nationals and their trade and enterprise, the American Government has been guided not only by the letter and spirit of the Japanese-American Commercial Treaty of 1911 but by those fundamental principles of international law and order which have formed the basis of its policy in regard to all peoples and their interests; and Japanese commerce and enterprise have continued to enjoy in the United States equality of opportunity.

Your Excellency cannot fail to recognize the existence of a great and growing disparity between the treatment accorded American nationals and their trade and enterprise by Japanese authorities in China and Japan and the treatment accorded Japanese nationals and their trade and enterprise by the Government of the United States in areas within its jurisdiction.

In the light of the situation herein reviewed, the Government of the United States asks that the Japanese Government implement its assurances already given with regard to the maintenance of the Open Door and to noninterference with American rights by taking prompt and effective measures to cause:

(1) The discontinuance of discriminatory exchange control and of other measures imposed in areas in China under Japanese control which operate either directly or indirectly to discriminate against American trade and enterprise;

(2) The discontinuance of any monopoly or of any preference which would deprive American nationals of the right of undertaking any legitimate trade or industry in China, or of any arrangement which might purport to establish in favor of Japanese interests any general superiority of rights with regard to commercial or economic development in any region of China; and

(3) The discontinuance of interference by Japanese authorities in China with American property and other rights including such forms of interferences as censorship of American mail and telegrams, and restrictions upon residence and travel by Americans and upon American trade and shipping.

The Government of the United States believes that in the interest of relations between the United States and Japan an early reply would be helpful.

APPENDIX F

JAPANESE REPLY TO U. S. NOTE REGARDING VIOLATION OF AMERICAN RIGHTS IN CHINA¹

The American Ambassador to Japan, Mr. Joseph C. Grew, has reported to the Department of State that the reply of the Japanese Government to his note of October 6 was delivered to the Embassy on the evening of November 18, accompanied by a translation supplied by the Japanese Foreign Office which reads textually as follows:

"EXCELLENCY:

"I have the honour to acknowledge the receipt of Your Excellency's note, No. 1076 dated October sixth, addressed to the then Minister for Foreign Affairs Prince Konoye, concerning the rights and interests of the United States in China.

"In the note are cited various instances based on information in the possession of the Government of the United States that the Japanese authorities are subjecting American citizens in China to discriminatory treatment and violating the rights and interests of the United States.

"I have now the honour to state hereunder the opinions of the Japanese Government with regard to these instances.

"One. The Circumstances which led to the adoption of the present measures concerning export exchange in Tsingtao and the present situation being, so far as the Japanese Government are aware, as set forth below, they consider that those measures can not be construed as constituting any discrimination against American citizens.

"A short time ago the Federal Reserve Bank of China was established in North China whose notes with an exchange value

¹ Department of State *Press Releases*, November 19, 1938.

fixed at one shilling and two pence against one yuan, have been issued thus far to the amount of more than one hundred million yuan, and are widely circulated. These bank notes being the compulsory currency of the Provisional Government, the maintenance of their value and their smooth circulation is regarded as an indispensable basis for the conduct and the development of economic activities in North China. Consequently the Japanese Government have taken a cooperative attitude; and all Japanese subjects are using the said notes, and in their export trade are exchanging them at the rate of one shilling and two pence. On the other hand, the old *FA-PI* still circulating in these areas has depreciated in exchange value to about eight pence per yuan. Consequently those who are engaged in export trade and are using this currency are enjoying illegitimate profits, as compared with those who use the Federal Reserve notes and carry on legitimate transactions at the legitimate rate of exchange: that is to say, Japanese subjects who use the Federal Reserve notes have been suffering unreasonable disadvantages as compared with persons who while residing and carrying on their business in the areas under the jurisdiction of the Provisional Government of North China, use nevertheless, the old *FA-PI* exclusively.

"Furthermore, the existence of the before-mentioned disparity in the exchange value between the new notes and the old *FA-PI*, which the Federal Reserve Bank has been exchanging at a rate not very much below par, is bound to exert an unfavourable effect upon the exchange value of the new notes, and eventually upon the exchange value of the Japanese yen.

"The Japanese Government feel that it is incumbent upon them not to remain indifferent to such a situation.

"The export exchange measures adopted in Tsingtao are calculated to place the users of old Chinese currency who have been obtaining unfair profits, on an equal footing with those who are using the Federal Reserve notes. These measures are also intended to protect the exchange value of the Federal Reserve Bank notes. Inasmuch as the application of the measures makes no differentiation according to nationality they cannot be considered as discriminatory measures. As a

matter of fact, it is through these measures that those users of the Federal Reserve notes who had in a sense been discriminated against, have been placed on an equal footing with the others, and thus enabled to compete on a fair basis.

"Two. In North and Central China the new Chinese regimes some time ago effected revisions of the customs tariff in an attempt to secure a rational modification of the former tariff enforced by the Kuomintang Government, which was unduly high and illcalculated to promote the economic recovery and general welfare of the Chinese people. However, the schedule actually adopted for the time being is the one that was approved by the powers in nineteen hundred thirty one, so that no complaint has been heard from foreign residents of any nationality on the spot. The Japanese Government are of course in favour of the purpose of the said revision, believing that it will serve to promote effectively the trade of all countries with China.

"Three. As for the organization of certain promotion companies in China, the restoration and development of China's economic, financial and industrial life after the present affair is a matter of urgent necessity for the welfare of the Chinese. Moreover, the Japanese Government are deeply solicitous for the early inauguration and progress of work having for its object this restoration and development, for the sake of the realization of a new order in East Asia, and are doing all in their power in that direction. The North China Development Company and the Central China Development Company were established with a view to giving China the necessary assistance toward the said restoration and also with the aim of contributing toward the development of China's natural resources. It is far from the thoughts of the Japanese Government to impair the rights and interests of American citizens in China or to discriminate against their enterprises. The Japanese Government therefore do not oppose, but welcome heartily, the participation of third powers on the basis of the new situation that has arisen.

"The telecommunication companies in North and Central China and of the Inland Navigation Steamship Company at Shanghai and the wharfage company at Tsingtao have also been established to meet the imperative need of an early restoration of

communications, transportation, and harbor facilities. With the exception of the telecommunications enterprise, which, because of its obvious relation to the maintenance of peace and order and to the national defense, as well as because of its public character, has been placed in the hands of special companies, all these enterprises are turned over to concerns that are ordinary Chinese or Japanese juridical persons, without any intention of allowing them to reap monopolistic profits by discriminating against America or any other power. As regards the wool trade, while the control of purchasing agencies was enforced for a time in the Mongolian region, it has since been discontinued. There is no plan at present of any sort for establishing a monopoly in tobacco.

"Four. Concerning the return of American citizens to the occupied areas, Your Excellency is aware that in North China there is no restriction, excepting in very special cases where the personal safety of those who return would be endangered, while in the Yangtze Valley large numbers of Americans have already returned. The reason why permission to return has not yet been made general is, as has been repeatedly communicated to Your Excellency, due to the danger that persists because of the imperfect restoration of order and also to the impossibility of admitting nationals of third powers on account of strategic necessities such as the preservation of military secrets. Again, the various restrictions enforced in the occupied areas concerning the residence, travel, enterprise and trade of American citizens, constitute the minimum regulations possible consistent with military necessities and the local conditions of peace and order. It is the intention of the Japanese Government to restore the situation to normal as soon as circumstances permit.

"Five. The Japanese Government were surprised at the allegation that there exists a fundamental difference between the treatment accorded to Japanese in America and the treatment accorded to Americans in Japan. While it is true that in these days of emergency Americans residing in this country are subject to various economic restrictions, yet these are, needless to say, restrictions imposed not upon Americans alone but also on all foreigners of all nationalities as well as upon the subjects

of Japan. I beg to reserve for another occasion a statement of the views of the Japanese Government concerning the treatment of Japanese subjects in American territory, referred to in Your Excellency's note.

"As has been explained above, the Japanese Government, with every intention of fully respecting American rights and interests in China, have been doing all that could possibly be done in that behalf. However, since there are in progress at present in China military operations on a scale unprecedented in our history, it may well be recognized by the Government of the United States that it is unavoidable that these military operations should occasionally present obstacles to giving full effect to our intention of respecting the rights and interests of American citizens.

"Japan at present is devoting her energy to the establishment of a new order based on genuine international justice throughout East Asia, the attainment of which end is not only an indispensable condition of the very existence of Japan, but also constitutes the very foundation of the enduring peace and stability of East Asia.

"It is the firm conviction of the Japanese Government that in the face of the new situation, fast developing in East Asia, any attempt to apply to the conditions of today and tomorrow inapplicable ideas and principles of the past neither would contribute towards the establishment of a real peace in East Asia nor solve the immediate issues.

"However, as long as these points are understood, Japan has not the slightest inclination to oppose the participation of the United States and other powers in the great work of reconstructing East Asia along all lines of industry and trade; and I believe that the new regimes now being formed in China are prepared to welcome such foreign participation.

"I avail myself [etc.] "

APPENDIX G

U. S. NOTE TO JAPAN REGARDING VIOLATION OF AMERICAN RIGHTS IN CHINA¹

Text of a note which the American Ambassador to Japan, Mr. Joseph C. Grew, communicated under instruction, to the Japanese Minister for Foreign Affairs, His Excellency Mr. Hachiro Arita, on December 31, 1938:

The Government of the United States has received and has given full consideration to the reply of the Japanese Government of November 18 to this Government's note of October 6 on the subject of American rights and interests in China.

In the light of facts and experience the Government of the United States is impelled to reaffirm its previously expressed opinion that imposition of restrictions upon the movements and activities of American nationals who are engaged in philanthropic, educational and commercial endeavors in China has placed and will, if continued, increasingly place Japanese interests in a preferred position and is, therefore, unquestionably discriminatory, in its effect, against legitimate American interests. Further, with reference to such matters as exchange control, compulsory currency circulation, tariff revision, and monopolistic promotion in certain areas of China, the plans and practices of the Japanese authorities imply an assumption on the part of those authorities that the Japanese Government or the regimes established and maintained in China by Japanese armed forces are entitled to act in China in a capacity such as flows from rights of sovereignty and, further, in so acting to disregard and even to declare nonexistent or abrogated the established rights and interests of other countries, including the United States.

The Government of the United States expresses its conviction that the restrictions and measures under reference not only are

¹ Department of State Press Releases, December 31, 1938.

unjust and unwarranted but are counter to the provision of several binding international agreements, voluntarily entered into, to which both Japan and the United States, and in some cases other countries, are parties.

In the concluding portion of its note under reference, the Japanese Government states that it is firmly convinced that "in the face of the new situation, fast developing in East Asia, any attempt to apply to the conditions of today and tomorrow inapplicable ideas and principles of the past neither would contribute toward the establishment of a real peace in East Asia nor solve the immediate issues," and that "as long as these points are understood, Japan has not the slightest inclination to oppose the participation of the United States and other powers in the great work of reconstructing East Asia along all lines of industry and trade."

The Government of the United States in its note of October 6 requested, in view of the oft-reiterated assurances proffered by the Government of Japan of its intention to observe the principle of equality of opportunity in its relations with China, and in view of Japan's treaty obligations so to do, that the Government of Japan abide by these obligations and carry out these assurances in practice. The Japanese Government in its reply appears to affirm that it is its intention to make its observance of that principle conditional upon an understanding by the American Government and by other governments of a "new situation" and a "new order" in the Far East as envisaged and fostered by Japanese authorities.

Treaties which bear upon the situation in the Far East have within them provisions relating to a number of subjects. In the making of those treaties, there was a process among the parties to them of give and take. Toward making possible the carrying out of some of their provisions, others among their provisions were formulated and agreed upon: toward gaining for itself the advantage of security in regard to certain matters, each of the parties committed itself to pledges of self-denial in regard to certain other matters. The various provisions agreed upon may be said to have constituted collectively an arrangement for safeguarding, for the benefit of all, the correlated principles on

the one hand of national integrity and on the other hand of equality of economic opportunity. Experience has shown that impairment of the former of these principles is followed almost invariably by disregard of the latter. Whenever any government begins to exercise political authority in areas beyond the limits of its lawful jurisdiction there develops inevitably a situation in which the nationals of that government demand and are accorded, at the hands of their government, preferred treatment, whereupon equality of opportunity ceases to exist and discriminatory practices, productive of friction, prevail.

The admonition that enjoyment by the nationals of the United States of nondiscriminatory treatment in China—a general and well established right—is henceforth to be contingent upon an admission by the Government of the United States of the validity of the conception of Japanese authorities of a “new situation” and a “new order” in East Asia, is, in the opinion of this Government, highly paradoxical.

This country's adherence to and its advocacy of the principle of equality of opportunity do not flow solely from a desire to obtain the commercial benefits which naturally result from the carrying out of that principle. They flow from a firm conviction that observance of that principle leads to economic and political stability, which are conducive both to the internal well-being of nations and to mutually beneficial and peaceful relationships between and among nations; from a firm conviction that failure to observe that principle breeds international friction and ill-will, with consequences injurious to all countries, including in particular those countries which fail to observe it; and from an equally firm conviction that observance of that principle promotes the opening of trade channels thereby making available the markets, the raw materials and the manufactured products of the community of nations on a mutually and reciprocally beneficial basis.

The principle of equality of economic opportunity is, moreover, one to which over a long period and on many occasions the Japanese Government has given definite approval. It is one to the observance of which the Japanese Government has committed itself in various international agreements and under-

standings. It is one upon observance of which by other nations the Japanese Government has of its own accord and upon its own initiative frequently insisted. It is one to which the Japanese Government has repeatedly during recent months declared itself committed.

The people and the Government of the United States could not assent to the establishment, at the instance of and for the special purposes of any third country, of a regime which would arbitrarily deprive them of the long-established rights of equal opportunity and fair treatment which are legally and justly theirs along with those of other nations.

Fundamental principles, such as the principle of equality of opportunity, which have long been regarded as inherently wise and just, which have been widely adopted and adhered to, and which are general in their application, are not subject to nullification by a unilateral affirmation.

With regard to the implication in the Japanese Government's note that the "conditions of today and tomorrow" in the Far East call for a revision of the ideas and principles of the past, this Government desires to recall to the Japanese Government its position on the subject of revision of agreements.

This Government had occasion in the course of a communication delivered to the Japanese Government on April 29, 1934, to express its opinion that "treaties can lawfully be modified or be terminated, but only by processes prescribed or recognized or agreed upon by the parties to them."

In the same communication this Government also said, "In the opinion of the American people and the American Government no nation can, without the assent of the other nations concerned, rightfully endeavor to make conclusive its will in situations where there are involved the rights, the obligations and the legitimate interests of other sovereign states."

In an official and public statement on July 16, 1937, the Secretary of State of the United States declared that this Government advocates "adjustment of problems in international relations by processes of peaceful negotiation and agreement."

At various times during recent decades various powers, among which have been Japan and the United States, have had

occasion to communicate and to confer with regard to situations and problems in the Far East. In the conducting of correspondence and of conferences relating to these matters, the parties involved have invariably taken into consideration past and present facts and they have not failed to perceive the possibility and the desirability of changes in the situation. In the making of treaties they have drawn up and have agreed upon provisions intended to facilitate advantageous developments and at the same time to obviate and avert the arising of friction between and among the various powers which, having interests in the region or regions under reference, were and would be concerned.

In the light of these facts, and with reference especially to the purpose and the character of the treaty provisions from time to time solemnly agreed upon for the very definite purposes indicated, the Government of the United States deprecates the fact that one of the parties to these agreements has chosen to embark—as indicated both by action of its agents and by official statements of its authorities—upon a course directed toward the arbitrary creation by that power by methods of its own selection, regardless of treaty pledges and the established rights of other powers concerned, of a “new order” in the Far East. Whatever may be the changes which have taken place in the situation in the Far East and whatever may be the situation now, these matters are of no less interest and concern to the American Government than have been the situations which have prevailed there in the past, and such changes as may henceforth take place there, changes which may enter into the producing of a “new situation” and a “new order,” are and will be of like concern to this Government. This Government is well aware that the situation has changed. This Government is also well aware that many of the changes have been brought about by action of Japan. This Government does not admit, however, that there is need or warrant for any one power to take upon itself to prescribe what shall be the terms and conditions of a “new order” in areas not under its sovereignty and to constitute itself the repository of authority and the agent of destiny in regard thereto.

It is known to all the world that various of the parties to treaties concluded for the purpose of regulating contacts in the Far East and avoiding friction therein and therefrom—which treaties contained, for those purposes, various restrictive provisions—have from time to time and by processes of negotiation and agreement contributed, in the light of changed situations, toward the removal of restrictions and toward the bringing about of further developments which would warrant, in the light of further changes in the situation, further removals of restrictions. By such methods and processes, early restrictions upon the tariff autonomy of all countries in the Far East were removed. By such methods and processes, the rights of extra-territorial jurisdiction once enjoyed by occidental countries in relations with countries in the Far East have been given up in relations with all of those countries except China; and in the years immediately preceding and including the year 1931, countries which still possess those rights in China, including the United States, were actively engaged in negotiations—far advanced—looking toward surrender of those rights. All discerning and impartial observers have realized that the United States and other of the “treaty powers” have not during recent decades clung tenaciously to their so-called “special” rights and privileges in countries of the Far East but on the contrary have steadily encouraged the development in those countries of institutions and practices in the presence of which such rights and privileges may safely and readily be given up; and all observers have seen those rights and privileges gradually being surrendered voluntarily, through agreement, by the powers which have possessed them. On one point only has the Government of the United States, along with several other governments, insisted: namely, that new situations must have developed to a point warranting the removal of “special” safeguarding restrictions and that the removals be effected by orderly processes.

The Government of the United States has at all times regarded agreements as susceptible of alteration, but it has always insisted that alterations can rightfully be made only by orderly processes of negotiation and agreement among the parties thereto.

The Japanese Government has upon numerous occasions expressed itself as holding similar views.

The United States has in its international relations rights and obligations which derive from international law and rights and obligations which rest upon treaty provisions. Of those which rest on treaty provisions, its rights and obligations in and with regard to China rest in part upon provisions in treaties between the United States and China, and in part upon provisions in treaties between the United States and several other powers, including both China and Japan. These treaties were concluded in good faith for the purpose of safeguarding and promoting the interests not of one only but of all of their signatories. The people and the Government of the United States cannot assent to the abrogation of any of this country's rights or obligations by the arbitrary action of agents or authorities of any other country.

The Government of the United States has, however, always been prepared, and is now, to give due and ample consideration to any proposals based on justice and reason which envisage the resolving of problems in a manner duly considerate of the rights and obligations of all parties directly concerned by processes of free negotiation and new commitment by and among all of the parties so concerned. There has been and there continues to be opportunity for the Japanese Government to put forward such proposals. This Government has been and it continues to be willing to discuss such proposals, if and when put forward, with representatives of the other powers, including Japan and China, whose rights and interests are involved, at whatever time and in whatever place may be commonly agreed upon.

Meanwhile, this Government reserves all rights of the United States as they exist and does not give assent to any impairment of any of those rights.

APPENDIX H

NOTE OF GREAT BRITAIN TO JAPAN, JANUARY 14, 1939¹

Text of the British note to Japan, delivered January 14, 1939, in Tokyo by the British Ambassador, Sir Roberts Craigie, to Foreign Minister Hachiro Arita:

I

I am instructed by His Majesty's Principal Secretary of State for Foreign Affairs to inform Your Excellency of the uncertainty and grave anxiety in which His Majesty's Government in the United Kingdom have been left by study of Japan's new policy in Far Eastern affairs as set out in recent statements by the late Prime Minister and other Japanese statesmen.

I am to refer more particularly to Prince Konoye's statements of Nov. 3 and Dec. 22, and to the communication made by Your Excellency to foreign press correspondents Dec. 19. This uncertainty has not been removed by conversations on this subject which I have had with Your Excellency from time to time.

II

From these pronouncements and from other official information issued in Japan His Majesty's Government infer that it is the intention of the Japanese Government to establish a tripartite combination or bloc composed of Japan, China and Manchuria in which supreme authority will be vested in Japan and subordinate roles will be allotted to China and Manchuria.

So far as China is concerned, it is understood that the Japanese Government is to exercise control, at least for some time, through the Asia Development Council in Tokyo, which

¹ Text as published in the *New York Times*, January 16, 1939.

is charged with the formulation and execution of policy connected with political, economic and cultural affairs in China.

Your Excellency's own communication to the press indicates that the tripartite combination is to form a single economic unit and economic activities of other powers are to be subjected to restrictions dictated by requirements of national defense and economic security of the proposed bloc.

III

According to Prince Konoye, the hostilities in China are to continue until the present Chinese Government has been crushed or will consent to enter the proposed combination on Japanese terms.

China, he said, will be required to conclude with Japan an anti-Comintern agreement and Japanese troops are to be stationed at specified points in Chinese territory for an indefinite period, presumably to insure that Japanese conditions for the suspension of hostilities are observed.

Moreover, his Excellency stated that the Inner Mongolian region must be designated as a special anti-Communist area. It is not clear what is meant by this, but in the absence of fuller information it can only be assumed that Inner Mongolia is to be subjected to an even greater degree of Japanese military control than other parts of China.

IV

His Majesty's Government are at a loss to understand how Prince Konoye's assurance that Japan seeks no territory, and respects the sovereignty of China, can be reconciled with the declared intention of the Japanese Government to compel the Chinese people by force of arms to accept conditions involving the surrender of their political, economic and cultural life to Japanese control, indefinite maintenance in China of considerable Japanese garrisons and the virtual detachment from China of the territory of Inner Mongolia.

V

For their part, His Majesty's Government desire to make it clear that they are not prepared to accept or to recognize changes of the nature indicated which are brought about by force.

They intend to adhere to the principles of the Nine-Power Treaty and cannot agree to unilateral modification of its terms.

They would point out that, until the outbreak of the present hostilities, the beneficial effects which the treaty was expected to produce were steadily being realized.

The Chinese people were maintaining and developing for themselves an effective and stable government and the principle of equal opportunity for commerce and industry of all nations was bringing prosperity to China and to her international trade, including that with Japan.

His Majesty's Government therefore cannot agree, as suggested in Japan, that the treaty is obsolete or that its provisions no longer meet the situation, except in so far as the situation has been altered by Japan in contravention of its terms.

VI

While, however, His Majesty's Government maintain that modification cannot be effected unilaterally and must be by negotiation between all the signatories, they do not contend that treaties are eternal.

If, therefore, the Japanese Government have any constructive suggestions to make regarding modification of any of the multilateral agreements relating to China, His Majesty's Government for their part will be ready to consider them. In the meantime, His Majesty's Government reserve all their rights under existing treaties.

VII

I am further instructed to refer to that portion of Prince Konoye's statement of Dec. 22 which states that Japan is prepared to give consideration to the abolition of extraterritoriality and rendition of foreign concessions and settlements in China.

This inducement to China to accept Japan's demands would appear to entail but little sacrifice on the part of the Japanese, for, if they succeed in their plans for control of the country, they will have no further need for extraterritoriality or concessions.

On the other hand, His Majesty's Government would recall that they undertook and nearly completed negotiations with the Chinese Government in 1931 for abrogation of British extraterritorial rights.

The negotiations were suspended by the Chinese Government in consequence of disturbed conditions following the seizure of Manchuria by Japanese forces in that year, but His Majesty's Government have always been ready to resume negotiations at a suitable time and are prepared to discuss this and other similar questions with a fully independent Chinese Government when peace has been restored.

VIII

In conclusion I am to state that if, as is possible, His Majesty's Government have in any way misinterpreted the intentions of the Japanese Government, they feel that it is because of the ambiguity with which those intentions have so far been expressed and they would welcome more precise and detailed exposition of the Japanese conditions for terminating hostilities and of the Japanese policy toward China.

INDEX

- Amau Statement, 70 ff.; British and American replies to, 72.
 Anti-Japanese Feeling in China, reasons for, 48; attitude of Chinese Government regarding, 52.
 Araki, General, quoted, 142.
 Arita, Foreign Minister, quoted, 95 f.
 Arnold, Julian, quoted, 59, 64.
 Blakeslee, Professor, quoted, 131 ff.
 Boycott, legality of, 23 n.
 Castle, William R., quoted, 185.
 China, charged by Japan to be unorganized, 54; constructive developments in, 59 ff.; cultural developments in, 61; declaration of, regarding Wang Ching-wei régime, 107; fighting for world interests, 169.
 Chow, S. R., quoted, 89 n.
 Communism, Japan's plea of defense against, 40 ff.; in China, 42, 44 ff.
 Crow, Carl, quoted, 46 n.; cited 51 n.
 Chamberlain, B. H., cited, 36 n.
 Chamberlain, W. H., quoted, 144.
 Dickinson, E. D., quoted, 34.
 Divine Right Doctrine, of Japan, 35 f.
 Doihara, Major-General, quoted, 142, 144.
 Education, development of, in China, 61 f.
 Embargo, 174, 178 ff.
 England, see Great Britain.
 Field, F. V., quoted, 19 n.
 Fuller, Stuart J., quoted, 49.
 Gonsiorowski, M., cited, 29 n.
 Grew, Ambassador, speech of, quoted, 15, 171.
 Great Britain, note of to Japan upon Amau statement, 72; attitude toward Japan's "New Order" for East Asia, 80; her Monroe Doctrine, 136; note of January 14, 1939, quoted, 159.
 Hara, Premier, quoted, 113.
 Hirota, Minister, quoted, 41, 88, 92, 93.
 Hummel, A. W., cited, 62 n.
 Hu Shih, cited, 61; quoted, 89 n.
 Japan, actions in China, 1 ff.; policies of, 1922-1931, 8 ff.; pleas of, 17 ff.; self-defense, 20 ff.; divine right theory, 35; vital interests of, 37; defense of, against communism, 40 ff.; plea of, against anti-Japanese feeling in China, 47 ff.; her fear of a strong China, 58; efforts of, to prevent unification of China, 64 ff.; real aims of, as avowed, 68 ff.; Amau statement, 70; declaration of "new order" for East Asia, 77; severs relations with Nationalist Government of China, 90; reply of, to American note of October 6, 1938; agreement with Wang Ching-wei, 99 ff.; Monroe Doctrine of, 109 ff.; population problem of, 111 ff.; imperialism of, 140 ff.; constitutional exaltation of the military, 192.
 Japanese, psychology of, 17.
 Konoye, Premier, quoted, 94, 96; cited, 100 n.

- Koo, V. K. Wellington, quoted regarding Tanaka Memorial, 150, 151; cited, 67 n.
- Kuo, P. C., quoted, 89 n.
- Lauterpacht, Professor, cited, 29 n.
- League of Nations, resolution of October 6, 1937, 14.
- Lin Yutang, quoted, 53.
- Lytton Commission, cited, 21, 27, 30, 38, 44, 59.
- Matsuoka, Yosuke, quoted regarding Tanaka Memorial, 150, 151 n, 152 n.
- Merrill, F. T., quoted, 50 f.
- Monroe Doctrine, Japan's, 109 ff.; American doctrine, 120 ff.; Olney quoted, 122 f.; Roosevelt quoted, 125; Magdalena Bay resolution, 126; American and Japanese doctrines contrasted, 128 ff.; Professor Blakeslee quoted, 131 ff.; England's doctrine, 136.
- New Order for East Asia, Japan's declaration of, 77 ff.
- Nine Power Treaty, 3; origin of section 4 of Article One, 4 n; 162; text of, Appendix A.
- Non-Recognition, United States declaration of, 11, 165.
- Olney, Richard, quoted, 122 f.
- Opium, Japanese policies regarding, 49 ff.
- Panay* sinking by Japan, 74.
- Paris Peace Pact, self-defense under, 28 ff.; text of, Appendix C.
- Population Problem, of Japan, 111.
- Psychology, Japanese, 17 ff.
- Rebus sic Stantibus*, examination of doctrine of, 81 ff.
- Reinsch, Paul S., quoted, 65 ff.
- Roosevelt, F. D., quoted, 170, 181, 188, 189.
- Roosevelt, Theodore, quoted on Monroe Doctrine, 125.
- Self-Defense, Japanese plea of, 20 ff.; as recognized by international law, 24; under Peace Pact, 28 ff.
- Shidehara, Ambassador, quoted, 110.
- Snow, Edgar, cited, 45.
- Sovereignty, defined, 32.
- Stimson-Borah Letter, text of, Appendix B.
- Stimson, Secretary H. L., letter of, to Senator Borah, 5; his *Far Eastern Crisis*, quoted, 7 n., 9 n.; quoted, 160, 193, 194.
- Sze, Dr. S. K. Alfred, cited, 61 n.
- Tada, Major-General, quoted, 143.
- Takouchi, T., quoted, 18 f.
- Tanaka Memorial, 146 ff.
- Tangku Truce, 13, 70.
- Taylor, George, cited, 91 n.
- Three Principles of Japan, 88 ff.
- Timperley, H. J., cited, 16.
- Treaties, Japan's view regarding obligation of, 76.
- Treaty, United States and Japan, terminated, 175.
- Twenty-One Demands, 2, 22 n, 68, 183.
- Uchida, Count, quoted, 76.
- United States, policies of, following invasion of Manchuria, 9; non-recognition note of, 11; notes of October 6, and December 31, 1938, 74 ff., 78; declaration regarding Wang Ching-wei régime, 106; Monroe Doctrine of, 120 ff.; Far Eastern policies of, 154 ff.; financial aid to China, 173.

- Wang Ching-wei, his agreement with Japan, 99 ff.; his régime inaugurated, 105; United States declaration regarding, 107; British statement, 107; Chinese statement, 107.
- Wang Shih-chieh, cited, 62.
- Washington Conference, 2; general character of agreements arrived at, 5.
- Webster, Daniel, quoted, 26.
- Wertheim, Barbara, quoted, 17 f.
- Williams, Sir John Fischer, cited, 139 n.
- Wilson, Woodrow, quoted, 119.
- Wright, Quincy, cited, 177 n.
- Yen, Y. C. James, cited, 61.
- Yen, Dr. W. W., quoted, 57.
- Young, A. Morgan, cited, 36 n; quoted, 152.